

COMMITTEE ON REVISION OF THE PENAL CODE



SUPPLEMENTAL MATERIALS FOR FIRST SUPPLEMENT TO MEMORANDUM 2020-4 (March 10, 2020)

Exhibit p.

Diversion

- Hon. Nancy O'Malley1
- Anthony Adams 14

Collaborative Courts

- Hon. Lawrence Brown36
- Hon. Stephen Manley 103

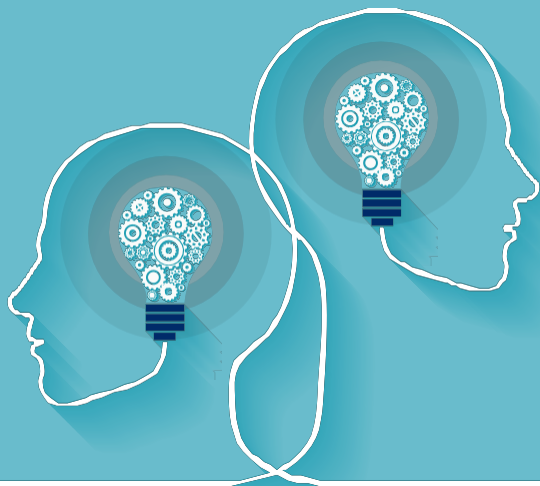
Probation and Restorative Justice

- sujatha baliga122, 150, 227, 237
- Chief Probation Officers of California 383

Attachment
to Submission of Hon. Nancy O'Malley

Alameda County District Attorney's Office

Alternatives to Incarceration



Collaborative Courts,
Diversion Programs &
Other Innovations

Alameda County District Attorney's Office 2020



Office of the District Attorney, Alameda County
Nancy E. O'Malley, District Attorney

INTRODUCTION

For many individuals involved in the criminal justice system, incarceration is not the best option. When people involved in the criminal justice system have resources and pathways to achieve success, recidivism drops considerably. The District Attorney's Office has created and helped develop many programs that address the underlying causes of crime and provide justice involved individuals with an opportunity to alter their negative behaviors, while remaining contributing members of society. These programs include: assistance with educational advancement (diploma, GED, vocational training, etc.), housing assistance, mental health and medical treatment, substance use treatment, transportation, and much more. Upon successful completion of our programs, in most cases the individual's charges are either never filed or dismissed.

OUR COLLABORATIVE COURTS ENCOMPASS:

Team Effort

In a Collaborative Court, the District Attorney's office partners with the court, defense attorney, probation, social services, health care and other allied professionals.

Court-Prescribed Goals

The court has guiding benchmarks for these programs and requires frequent check-ins and status reports to ensure the offender is actively participating in the program.

Customized Services and Mentoring

The programs are tailored to the needs of the individual to ensure the root cause of the criminal behavior is targeted.

Accountability and Restitution

The individual has the opportunity to participate in a program for 12-24 months. If the victim has suffered a loss, the court will order restitution.

Individual Successes

Graduates from our programs achieve stability through increased self-esteem, developing life skills, and acquiring housing and employment which results in reduced recidivism.

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REALIGNMENT AND ALTERNATIVE INTERVENTION PROGRAM SUMMARY

PROGRAM NAME: Drug Court

DESCRIPTION:

The North County Drug Court supervises substance abuse treatment for “high risk/high needs” individuals who are addicted to substances and are charged with drug related offenses. The purpose of the program is to reduce recidivism by treating the substance use disorders that caused or contributed to charged crimes. Referred individuals are evaluated by Drug Court clinicians, including mental health specialists. Individuals who are found to meet criteria are assessed then placed in appropriate treatment programs that can range from residential facilities to outpatient self-help meetings.

The Drug Court protocol is divided into four phases that extend for a total of at least one year. Individuals must complete all four phases in order to graduate from the program. The final phase requires at least 60 consecutive days of sobriety as shown by negative drug tests. Individuals who successfully complete the program are entitled to dismissals of their pending charges and/or probation violation petitions. In some cases, participants can have their probations terminated pursuant to PC 1203.3. Finally, participants may have their pending cases sealed as per PC 851.90.

PROGRAM NAME: Veteran’s Treatment Court and Military Diversion

DESCRIPTION:

Veteran’s Treatment Court (for Felonies) and Military Diversion (for Misdemeanors): These courts are designed for individuals charged with a crime(s) who are active or retired members of the U.S. Military and who suffer from a mental health problem, substance use disorder, traumatic brain injury, PTSD or from sexual trauma as a result of their service and furthermore that condition was the cause of the charged offense. Any party can refer a veteran to this court for an evaluation of eligibility. Each member of the collaborative court team has a say in the eligibility of the veteran, and ultimately the court decides. The veterans are assessed, and a treatment plan is formulated for their recovery by their treatment provider including but not limited to mental health and substance use disorder treatment. The participants must follow the treatment plan, pay any outstanding restitution, and not be re-arrested in order to successfully complete the program. Veterans eligible for VA benefits primarily seek their treatment at VA facilities. High risk/high needs participants’ treatment is monitored and supported by case managers from the Office of Collaborative Courts, and post-plea felony participants are monitored by the Probation Department. All participants attend progress reports in court with frequency dictated by level of risk and need.

Felons that successfully complete the program after 18 months to two years can be eligible for a shorter term of probation, reduction to misdemeanor and elimination of fines/fees and a dismissal. Misdemeanors that are pre-plea result in dismissals and a sealing of the record upon successful completion after one year.

Misdemeanors that are post-plea are eligible for early termination and dismissal of their convictions.



REALIGNMENT AND ALTERNATIVE INTERVENTION PROGRAM SUMMARY

PROGRAM NAME: Behavioral Health Court (BHC)

DESCRIPTION:

BHC treats individuals with serious mental illnesses whose disorders caused or contributed to the commission of their charged criminal offenses. The goals of the program are to reduce recidivism, improve the quality of life of individuals experiencing severe mental illness, and protect the safety, health, and property of the community. Referred individuals are evaluated by doctors and clinicians from Alameda County Behavioral Health (ACBH). Those found to meet criteria are assigned to a case management team then placed in intensive community-based treatment programs ranging from subacute and crisis residential facilities to outpatient living environments. The resulting treatment protocols persist for one to two years. Participants who successfully complete their protocols are entitled to have their pending cases and/or probation violations dismissed then sealed pursuant to PC 851.91. Graduating participants may also have their probations terminated as per PC 1203.3.

PROGRAM NAME: Mentor Diversion

DESCRIPTION:

Individuals between the ages of 18-25 who have been arrested for felony level drug sales or large quantity possession of drugs for sale, with little or no criminal history are eligible for Mentor Diversion Court. Prior to being accepted in the program, the District Attorney's Office reviews each candidate for eligibility. The participants are supervised by a probation officer and are required to meet regularly, seek and maintain employment, write essays, drug test, enroll in and complete their education. Where possible, the individual is assigned a mentor, who is generally a volunteer member of the community. However, the program envisions inclusion of certified Peer Support Specialists, those with lived experience in criminal justice, to provide support and guidance. A condition of participation in the program is that the individual not be arrested or convicted of another crime. Upon successful completion of the approximately 18-month program, the case is dismissed and sealed. In order to refer individuals to this program, please email or call assigned DA to discuss eligibility.



REALIGNMENT AND ALTERNATIVE INTERVENTION PROGRAM SUMMARY

PROGRAM NAME: Early Intervention Court (EIC)

DESCRIPTION:

This court serves those individuals who are charged with non-violent felony level crimes that are local prison eligible. Eligible individuals must be free of a felony conviction within the last five years, have no prior strike convictions and are not on felony probation. The crimes are primarily theft, property crimes or drug sales. The individuals are screened for eligibility by the District Attorney's Office and then undergo a needs assessment by the case manager wherein a plan with particular goals is generated. They are monitored weekly by the case manager. Goals such as enrolling in and completing education, acquiring and maintaining employment, finding stable housing, getting a driver's license, addressing any mental health or substance abuse issues, and not being re-arrested for new crimes must be achieved during the program. The program envisions inclusion of certified Peer Support Specialists, those with lived experience in criminal justice, to provide support and guidance.

Depending on the seriousness of the crime, upon successful completion of the program, the case can be reduced or dismissed. Unless there is an issue of outstanding restitution, the cases remain pre-plea until they are dismissed. If restitution is owed and the participants cannot pay it up front, a plea is entered with a DEOJ and will not be dismissed until full restitution is paid. In order to refer an individual to this program, email or call assigned DA to discuss eligibility.

PROGRAM NAME: Reentry Court

DESCRIPTION:

Reentry Court provides intensive community-based treatment for individuals on Parole and PRCS. By providing intensive case management on a personal level, Reentry Court focuses on promoting stabilization and accountability in all areas of the participant's life. The resulting goal is to reduce recidivism, protect community safety and improve the quality of life for participants. Parolees and individuals on PRCS are referred to Reentry Court by their supervising Parole Agent or Probation Officer. Referrals are also made directly from the Realignment Revocation Court for individuals who are on active Parole or PRCS and have a pending petition to revoke. In order to graduate from Reentry Court a participant must complete all four phases of the program within 12-18 months, successfully complete a treatment program and have at least 60 days abstinence from all drugs and alcohol.



REALIGNMENT AND ALTERNATIVE INTERVENTION PROGRAM SUMMARY

PROGRAM NAME: Misdemeanor Pre-Charging Diversion

DESCRIPTION:

The Alameda County District Attorney's Office Misdemeanor Diversion Program (MDP) allows individuals who have engaged in low-level misdemeanor conduct to participate in an educational, self-awareness program in lieu of charges being filed. The program through Pacific Educational Services (PES) began in July 2015 and is designed to reduce recidivism by providing low-level offenders the opportunity for rehabilitative education rather than a misdemeanor conviction. Eligibility will be determined by the Deputy District Attorney reviewing the case for filing using established criteria that defines which individuals and offenses qualify.

Individuals are notified in writing of the option to participate in the program with instructions for enrollment. If a qualifying individual fails to enroll and the case is charged, the pre-trial Deputy District Attorney will again determine whether the individual is eligible to do MDP post-plea through PES. The individual has 90 days to enroll. There is a nominal cost to participate and PES staff assist the individual in payment options. The District Attorney's Office does not accept an "administration fee." Once the individual has successfully completed the class, generally one day, but sometimes two days and pays the restitution if applicable, the criminal charges will not be filed or will be dismissed.

If the individual enrolls and completes the one- or two-day class, the case is not only dismissed, but the arrest will be designated a "detention" only. Any and all records will remove reference to an "arrest" and generally, a "detention" is not included in any criminal justice record.

PROGRAM NAME: Clean Slate

DESCRIPTION:

The Alameda County District Attorney's Office in partnership with the East Bay Community Law Center, created the Clean Slate program several years ago. The Clean Slate Court allows petitioners to file a number of different petitions to expunge their criminal history. In Clean Slate court, the petitioner, with the assent of the District Attorney's Office and the Court, may secure early terminations of probation. A petitioner, with the assent of the District Attorney's Office and the Court, can withdraw his or her plea of guilty or no contest, and receive a dismissal of the case. Additionally, the petitioner can be granted an order to seal conviction and even arrest records. The Clean Slate Court mainly utilizes Penal Code Sections 1203.3 (early termination of probation); 1203.4 (withdrawal of plea and dismissal); 17(b) (reduction of a felony to a misdemeanor); 17(d) (reduction of misdemeanor to infraction); 851.8 (factual finding of innocence and seal and destroy arrest record); and, 851.91 (sealing arrest record).

Individuals file petitions with the court either pro per or with the assistance of legal counsel. This court is generally convened the 1st and 3rd Tuesday for felony Petitions and Thursdays for misdemeanors. The clerk's office currently puts a limit on the number of petitions heard on each day of the Court's calendar to 35 petitions. The District Attorney's Office reviews each petition prior to the court date and responds to each.



REALIGNMENT AND ALTERNATIVE INTERVENTION PROGRAM SUMMARY

PROGRAM NAME: Homeless and Caring Court

DESCRIPTION:

The Homeless and Caring Court was established and continues to operate on the principles of providing assistance to the vulnerable population of individuals who have experienced poverty, homelessness, drug addiction, or mental health related issues. This Court serves individuals who are at-risk for homelessness who have been through at least 30 days of a rehabilitation program and who have unpaid traffic fines and some court fees. Eligible participants are identified and referred to the Court by a variety of Alameda County Social Service and Health Care Services Agencies. The individuals are screened by staff of the Superior Court. The Public Defender represents all participants in the Homeless and Caring Court. The District Attorney is a fully operating partner in the Court by reviewing applications and consenting to the dismissal of these fines and fees. This Court meets every other month (even months) on 3rd Fridays at 1:00 at the St. Vincent De Paul Society in West Oakland.

PROGRAM NAME: Propositions 47 & 64 Resentencing

DESCRIPTION:

Previously, this Court, on the motion and assent of the District Attorney's Office, reduced as a matter of law all felony convictions that became misdemeanor crimes through the passage of Proposition 47. Further, through the passage of Proposition 64, the District Attorney's Office identified all convictions involving cannabis. On a weekly basis, the convictions were reviewed by the District Attorney's Office and were reduced and/or dismissed.

Currently, in partnership with Code for America, and with the agreement of the Court, the District Attorney's Office is creating a Petition for every case involving a cannabis conviction. The District Attorney's Office will present each Petition to the Court for dismissal of all cannabis related convictions. Virtually all of the Petitions will be submitted to the Court without the need of an open Court event or an affirmative request by the person seeking relief.

OTHER ALTERNATIVE INTERVENTION PROGRAMS

TRANSITIONAL AGE YOUTH PROGRAM (“TAY-P”)

This program identifies individuals age 18-25 years who have committed their first felony offense. Alameda County has opted into a statutorily created pilot project. The program engages young adult participants by housing them at the Juvenile Justice Center. The program was created and developed to provide housing, employment and education services, as well as other ancillary services that are unique to the participant. The pilot project requires the individual to enter a guilty plea, but the plea is not entered into the Court’s record, commonly referred to as a deferred entry of judgment. Once successful completion has occurred, the matter is dismissed. The case can be considered for Clean Slate Court after a period of time during which the individual has remained crime-free.

ALAMEDA COUNTY JUSTICE RESTORATION PROJECT (ACJRP).

The Alameda County Justice Restoration Project (ACJRP) is a nationally recognized Pay for Success project spearheaded by District Attorney Nancy O’Malley in collaboration with county partners, community-based organizations, and community representatives. A competitive grant award from the California Board of State and Community Corrections, together with financial support from government and private philanthropic funders nationwide, made it possible for ACJRP to determine whether the manner in which engagement is achieved and services are provided can demonstrably reduce recidivism among individuals who have more than one felony conviction. DA O’Malley envisioned the ACJRP Peer Support Model, and she created the opportunity for ACJRP coaches to earn formal national certification as “Peer Support Specialists.” All the ACJRP coaches are now certified Peer Support Specialists. ACJRP provides excellent access to direct services, navigation to existing services, and awareness of new opportunities. ACJRP provides housing, education, career opportunities, and mental health/substance abuse care. Through peer support, the coaches show participants how to navigate a successful path to attain their objectives and goals and build self-reliance and productive lives. Providing individualized peer support empowers ACJRP participants to make positive decisions, which proactively prevents recidivism. ACJRP enrollment occurs only at the pretrial stage. ACJRP provides an alternative to both incarceration and traditional probation. ACJRP is unique among Pay for Success projects because participants are released at the pretrial stage with an opportunity to clear their record with a deferred entry of judgment. ACJRP enrollment was successfully completed in August 2019 with 150 participants enrolled. Recidivism and other outcomes will be determined by an independent evaluator prior to the end of 2021.

OTHER ALTERNATIVE INTERVENTION PROGRAMS - CONT.

MENTAL HEALTH PRE-CHARGING DIVERSION

This is a pilot project. The program involves close collaboration between the District Attorney's Office, Police and Community Based Organizations. Individuals who may have committed misdemeanor offenses and have been contacted by law enforcement will be offered the alternative of transportation to the Public Safety Navigation Center. There they will meet with a peer counselor and be assessed by a skilled clinician. The Navigation Team comprised of a dedicated Mental Health Deputy District Attorney, the peer counselor and the clinician will meet and confer regarding an appropriate course of action and case management plan for the client. The level of supervision and engagement will include consideration of both the severity of illness as well as the severity of the client's criminal conduct. If the individual agrees to and completes the recommended course of treatment, no criminal sanctions will result. This program is in development and targeted to begin in the spring of 2020.

APPENDIX

COLLABORATIVE COURTS & OTHER DIVERSION PROGRAMS (AT-A-GLANCE)

- **Drug Court:** Secures supervised substance abuse treatment for “high risk/high needs” persons charged with drug related offenses.
- **Veteran’s Court and Military Diversion:** Serves U.S. Military Veterans suffering from mental illness, psychological trauma and/or substance abuse disorders related to their military service and to their charged crimes.
- **Behavioral Health Court:** Treats individuals with serious mental illnesses whose disorders caused or contributed to the commission of their charged offenses.
- **Mentor Diversion Court:** Diverts persons aged 18-25 who are charged with drug sales.
- **Early Intervention Court (EIC):** Serves non-serious offenders charged with 1170(h) offenses – primarily theft, property crimes, and drug sales.
- **Reentry Court:** Provides increased support for reintegration into the community for individuals with felony convictions who have been to State Prison and are now active to parole or PRCS who are at high/moderate risk to recidivate or violate their supervision terms.
- **Homeless and Caring Court:** Community court serving individuals who are at risk for homelessness by dismissing tickets, fines, and court fees from previous traffic offenses and non-violent misdemeanor convictions.
- **Project Clean Slate:** Serves individuals who have suffered both felony and misdemeanor convictions by reduction and/or expungement of identified prior criminal history through early termination of probation, dismissal, and sealing of prior cases.
- **Alameda County Propositions 47 & 64 Resentencing Program:** Serves individuals convicted of certain felonies by reducing certain felony convictions to misdemeanors.
- **Misdemeanor Pre-Charging Diversion:** Pre-charging alternative that diverts individuals away from the criminal justice system in favor of an appropriate education-based program.
- **Mental Health Pre-Charging Diversion:** Pre-Charging alternative that refers individuals diagnosed with mental illness and substance use disorders into community-based treatment. (in development)
- **Transitional Age Youth (TAY):** Diverts young people, aged 18-25, charged with their first felony. (pilot)
- **Justice Restoration Project (ACJRP):** Provides peer coaching for persons aged 18-34, who have non-serious felony conviction(s) and have committed a new non-serious felony.

YOUTH

- **Mental Health Collaborative Court:** Serves mentally ill youth and their families with wraparound support.
- **Young Women’s Empowerment Program:** School based program, which serves young women ages 13-18, who are sex trafficking victims, have been sexually exploited or are at risk of sex trafficking or exploitation. (in development)
- **Girls Court:** Serves youth involved in the juvenile justice system who are survivors of sex trafficking or who present with possible concerns for engagement in sex trafficking and other forms of exploitation.
- **SafetyNet:** Team of service providers and other stakeholders who identify youth who are believed to be victims of human trafficking and sexual exploitation or who are at risk of exploitation and connect them with necessary services.

Alternatives to Incarceration

Collaborative Courts, Diversion
Programs & Other Innovations

Alameda County District Attorney's Office 2020



Office of the District Attorney, Alameda County
Nancy E. O'Malley, District Attorney

Attachment
to Submission of Anthony Adams



**FINAL OUTCOME REPORT
MENDOCINO COUNTY
BEHAVIORAL HEALTH COURT
JAG/BYRNE GRANT IMPLEMENTATION
2015-2017**

Prepared April 2018 by:
KRISTY KELLY, M.A., M.F.T.
CONSULTANT IN PUBLIC BEHAVIORAL HEALTH

598 Cochrane Avenue, Ukiah, CA 95482 (707) 972-5057
kristykelly3@gmail.com

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EXECUTIVE SUMMARY

The purpose of this report is to provide a final evaluation and report of outcomes of the Mendocino County Behavioral Health Court as implemented under a Justice Assistance Grant (JAG) Program Recidivism Reduction Fund Grant administered by the Board of State and Community Corrections (BSCC), during the three-year period, 2015-2017. Grants were targeted to programs that produce documented outcomes of reducing re-offending and subsequent involvement with the criminal justice system through a variety of local strategies. Mendocino County was successful in its application for funds to formally implement a specialized Behavioral Health Court and was awarded a total of \$660,000 for the three-year period of the grant.

Grantees were required to prepare a Local Evaluation Plan to identify goals and strategies specifically targeted to reducing recidivism. The granting agency acknowledged that effective programs can have difficulty demonstrating rigorous cause and effect in program outcomes. Mental Health Court programs have been the subject of validated research and there are published standards to support outcomes of reduced recidivism. The initial grant proposal and subsequent Local Evaluation Plan focused on mapping the formal development of Mendocino County's Behavioral Health Court (process data) and tracking client participation and subsequent recidivism rates (outcome data) for clients completing the program.

A review of process data shows methodical and sustained development of the program, including hiring of dedicated staff; conducting regular structured meetings of the steering committee; and development and implementation of written policies and procedures.

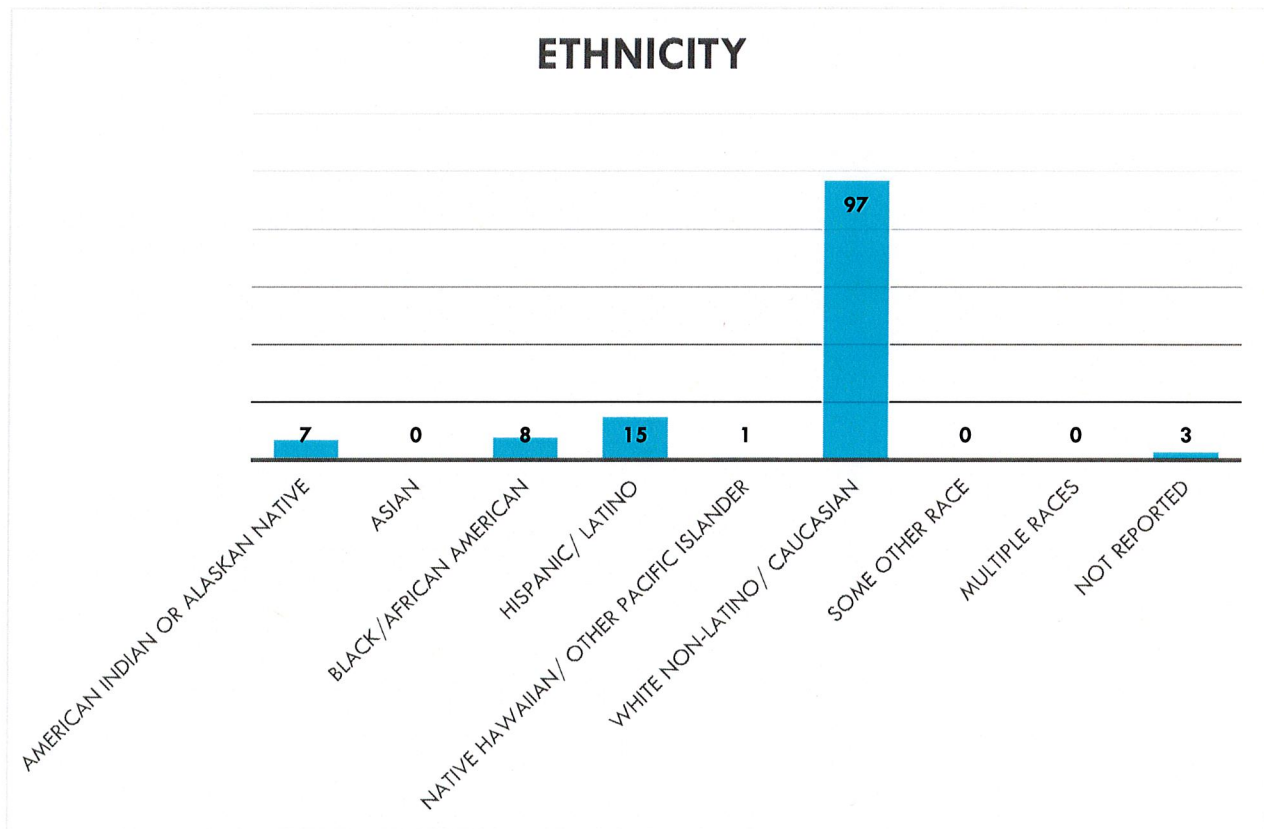
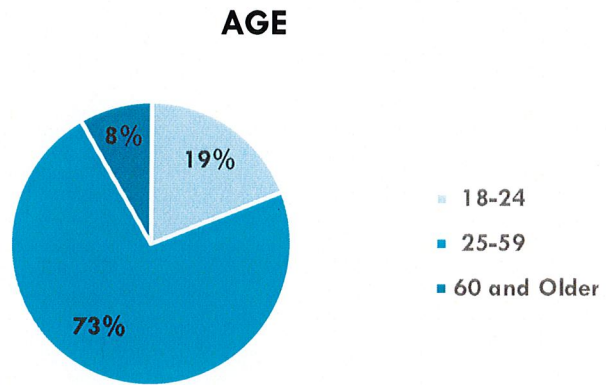
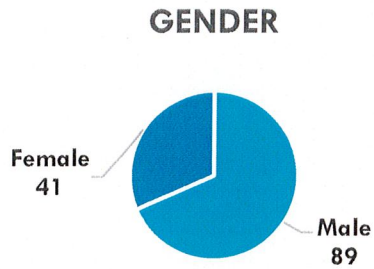
Review of outcome data shows that 131 individuals were identified with the program during the period of the grant. Of these, a total of 110 were active participants, with 32 completing ("graduating") the program. During the period of the grant, there were no new offences in 75% of program graduates. While actively participating in the program, these individuals had 78% decreased time incarcerated of over the period prior to enrollment dating back to 2011.

BRIEF PROGRAM DESCRIPTION

Established with guidance from a multi-agency Steering Committee (Mendocino County Partners Against Recidivism – MPARS) the Behavioral Health Court (BHC) is a specialized Therapeutic Court for the Superior Court of the County of Mendocino. The BHC began in 2011 as a timed calendar ("1:1:00 Court") for defendants with mental illnesses or cognitive impairments (often with co-occurring substance abuse) and, in 2015, began developing into a formal Behavioral Health Court through grant resources from the Board of State and Community Corrections. Modeled after other "mental health courts," this is a problem-solving alternative to traditional criminal court. It aims to link defendants to effective treatment and support for long-term stabilization that will reduce recidivism among this population.

Participants in the BHC are arrestees charged with non-violent criminal offenses who are identified through mental health screening and assessments as having a serious mental illness or cognitive impairment, the existence of which was a substantial factor in their criminal conduct. They voluntarily participate in a judicially supervised treatment plan developed jointly by a team of court staff and mental health professionals and community-based case managers. Incentives reward adherence to the treatment plan or other court conditions; non-adherence may be sanctioned. The program established a weekly behavioral court in Ukiah at the outset of the grant, and subsequently established a bi-monthly mental health court in the branch court in Fort Bragg.

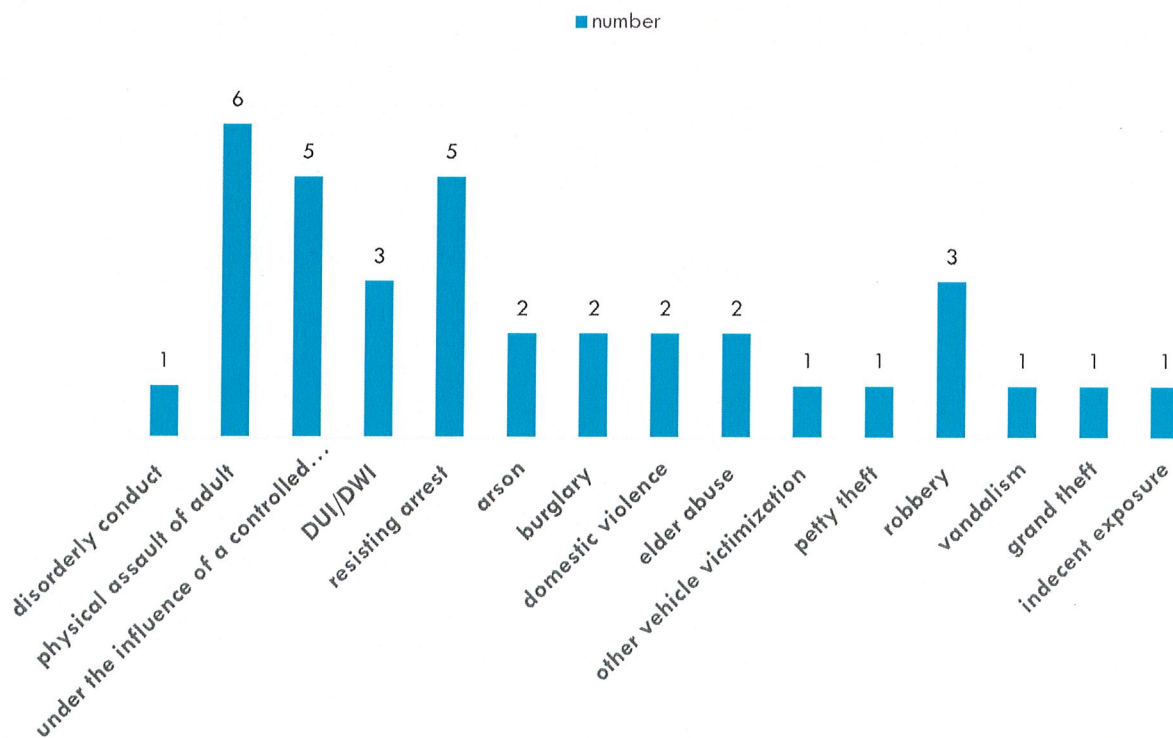
CHARACTERISTICS OF PARTICIPANTS



Persons active in BHC on the start date of March 1, 2015 were included in this study as was anyone issued a MPAR (client id) number during the grant period – a total of 131 individuals. Of this number, client status at the end of the grant period (December 31, 2017) was as follows:

Status	Client Count	Average #Days	Total # Days
Active	12	Not tracked	Not tracked
Graduated	32	360	11,520
Exited Without Graduating	66	85	6,010
Rejected by the Court	3	-0-	-0-
Did not Participate	12	-0-	-0-
Status Unclear	6	-0-	-0-
Total	131	172	17,530

**Type of Crimes Before Entry
(32 Graduates Had Committed 36 Crimes)**



METHODS

REVIEW OF TARGETED OUTCOMES

The Local Evaluation Plan restated the goal of "reducing arrests, days of incarceration and overall recidivism" and the belief that "Treatment, support, discipline and education...will reduce their contact with law enforcement and the criminal justice system." The following specific evaluation strategies were listed:

A. For Outcomes Evaluation

1. For every BHC participant:
Time from arrest to:
 - a. Referral to the BHC court
 - b. Psychological Stabilization
 - c. Acceptance to BHC
2. How many defendants were referred to BHC (measured by calendar year)
3. How many defendants were found eligible and accepted into the BHC (measured by calendar year)
 - a. How many cases were accepted (e.g. some defendants have multiple files)
 - b. Breakdown of felony v. misdemeanor
 - c. Breakdown in case type (drug, property, violence including vops)
 - d. Breakdown by gender and age group (18-24) (25 and over)
4. How many referrals were not accepted
Number of Behavioral Health Court appearances and corresponding event description
5. How many defendants were found eligible and accepted into the BHC (measured by calendar year)
 - a. How many cases were accepted (e.g. some defendants have multiple files)
 - b. Breakdown of felony v. misdemeanor
 - c. Breakdown in case type (drug, property, violence including vops)
 - d. Breakdown by gender and age group (18-24) (25 and over)
6. How many referrals were not accepted
7. Number of Behavioral Health Court appearances and corresponding event descriptions
From Arraignment to Disposition
8. How many participants successfully completed the program (measured annually)

- a. Number of Case Dispositions
- 9. How many participants were ejected from the BHC
 - a. Reasons for Ejection
- 10. Number of days of incarceration prior to participation in BHC
- 11. Number of days of incarceration after entry and while participating in BHC
 - a. Reason for re-incarceration (e.g., new arrest or sanction)
 - b. Reductions translated to cost savings at the standard per day cost
- 12. Recidivism rates for individuals after completing the BHC (measured in years 2 and 3)

B. For BHC Process/ JAG Grant Oversight Process Evaluation

- 1. Design and Implementation of BHC Policies and Written Procedures
 - a. What was Developed – Referral, Eligibility standards, Participant Agreements and Individualized Case Management Plan
 - b. When was It Implemented
 - c. Year-end evaluation of Policy and Procedure Effectiveness
- 2. Number of MPAR Steering Committee Meetings
 - a. Measure attendance of Members
 - b. Agenda development and retention
 - c. Minutes taken and maintained
 - d. Budget Compliance reports
- 3. Number of Bio-Psycho-Social Health Assessments (BPSHA) Developed
 - a. Source of BPSHA (e.g., Ortner, RQM, VA, other)
- 4. Number of Participants Drug/Alcohol tested during BHC
 - a. Tracking all positive and negative test results weekly
- 5. Number of Designed and Adopted Individualized Case Management Plans
 - a. Measure the number of BHC appearances before Individualized Case Management Plan is Adopted
- 6. For Care Coordinators
 - a. Number of BHC participants assigned to each Care Coordinator
 - b. Number of BHC participants referred to Drug and Alcohol Treatment
 - c. Number of BHC participants needed assistance with Housing
 - d. Number of BHC participants needed assistance with Medi-Cal
 - e. Number of BHC participants eligible for Social Security who needed Assistance with initiation or resumption of benefits
 - f. Number of BHC participants actively and consistently engaged in individual or group counseling
 - g. Number of BHC participants referred for Anger Management

There is overlap in the two sets of listed strategies. This evaluation has identified **two clear outcomes** to be explored for evaluation:

- 1) How effective were the grantees in achieving the stated goal of **establishing a stable and structured Behavioral Health Court?**
- 2) What are the documented **impacts on the rate of recidivism** for offenders who complete the program?

DATA SOURCES

The program has produced a variety documents that provide evidence and data that speak to these questions. These documents have been reviewed by the evaluator and are referenced in the section on outcomes.

Materials reviewed in preparation of this report included: Grant Proposal prepared November, 2014; Mendocino County Budget: "Justice Assistance Grant" 2015-2017; "Reporting Guidelines for JAG Grantees"(BSCC); Quarterly Reports submitted to BSCC 2015-2017 (including backup documentation); Local Evaluation Plan dated 6/30/15; Mendocino Partners Against Recidivism (MPAR) Steering Committee Minutes 2015-2017; "Mendocino County Behavioral Health Court Policies and Procedures" dated 5/1/2017; demographic data; record of participation and outcomes for program participants; tracking data on results of weekly testing for drugs and alcohol 2015-2017; comparative data on number of arrests and days in jail for 33 program graduates and 44 other program participants; data on types of crimes committed by participants. Redwood Quality Management Company data report on type and length of services for 48 clients of BHC; survey of 23 agency professionals involved with MHC (2018); interviews with agency staff.

EVALUATION DATA CHALLENGES AND BARRIERS

Data was reviewed and analyzed for 131 individuals who had an assigned MPAR ID in the program database and could be identified with the program during the period of the grant, March 1, 2015 through December 31, 2017. The level of participation on the part of these clients varied widely from "not enrolled" to multiple years of active participation. Data has been sorted, analyzed and labeled taking this variability into consideration.

Data resources for this project were, for the most part, detailed and authoritative for active program participants and graduates, though data is missing for some participants. Several identified data targets were never tracked. Questions that seemed worthwhile to include in the Local Evaluation Plan (e.g.: "Number of BHC participants assigned to each Care Coordinator") were not

answered in the documents reviewed. There is no evidence that the program suffered as a result of these questions remaining formally unanswered. RQMC was helpful in providing narrative answers to questions about consistency of care.

The quality of reporting by the three agencies providing case management and other direct services has improved over time. These agencies did provide information for each of the quarterly reports, and, as of June 2016, have received substantial training from RQMC to support Medi-Cal billing (which also supports stronger data reporting).

Finally, the end of the grant period means that data for participants included in this report are evaluated for distinctly different lengths of time on the critical question of recidivism. Some show a three-year history and, others, just a few months. Over the life of the grant, however, data clearly shows the positive impacts of the program on the rate of recidivism.

OUTCOMES

OVERVIEW

Mendocino County's successful application for CCBC Recidivism Reduction funds had a clear strategy for reducing re-arrests and re-incarceration: formalize and create systematic supports for a specialized Behavioral Health Court. For purposes of this final report on the grant, recidivism reduction is the targeted outcome and formal development of the Behavioral Health Court is the process used to achieve this goal. This evaluation will first evaluate steps taken to develop the Behavioral Health Court, and then examine the data on impacts on recidivism for participants.

DATA ON ESSENTIAL PARTNERSHIPS

Behavioral Health Courts can only perform when there are strong working partnerships by systems that interact with offenders. Therapeutic courts are sometimes known as "problem solving" courts. Collaborative problem solving amongst partner agencies is essential for a successful BHC. There is substantial data to support the finding that Mendocino County BHC has strong essential partnerships:

1. Quarterly reports submitted to BSCC contained self-reports by agencies on the question "How would you rate the following partners...how actively involved?" (scale of 1-5) The following agencies received ratings of "5" on 97% of the responses reviewed: Prosecution; Public Defender; Courts; Community corrections (probation); Corrections; Health care providers; Mental health care providers, Community-based service providers. Mendocino County Behavioral Health was mentioned in the 3rd quarter of 2016 in the following note: "During the third quarter of 2016, Mendocino County Mental Health Services (Behavioral Health Department) has transitioned to a new provider in response to the cancellation of the contract with Ortner Management Group. This change is proving to be beneficial as our new provider, Redwood Quality Management Corporation, is actively engaging community partners in developing viable mental health services for those we serve. There was a deficit in provision of mental health services under Ortner Management Group (OMG). We are optimistic about improved mental health services provision to our community and the BHC."

2. Participation in the Steering Committee (MPAR) was strong. Review of attendance sheets showed 93% participation by Steering Committee members. Attendance by non-members nearly doubled the number of participants. Meeting agendas, rosters and minutes were clear and well organized. While the BHC Policies and Procedures Manual calls for (at least) quarterly meetings of the Steering Committee (or a total of 11 meetings during the grant period) the MPAR met twice as often (22 times) with an average of 13 people in attendance. Extra meetings were focused on budgetary matters and review of Policy and Procedures.

SYSTEM DEVELOPMENT DATA

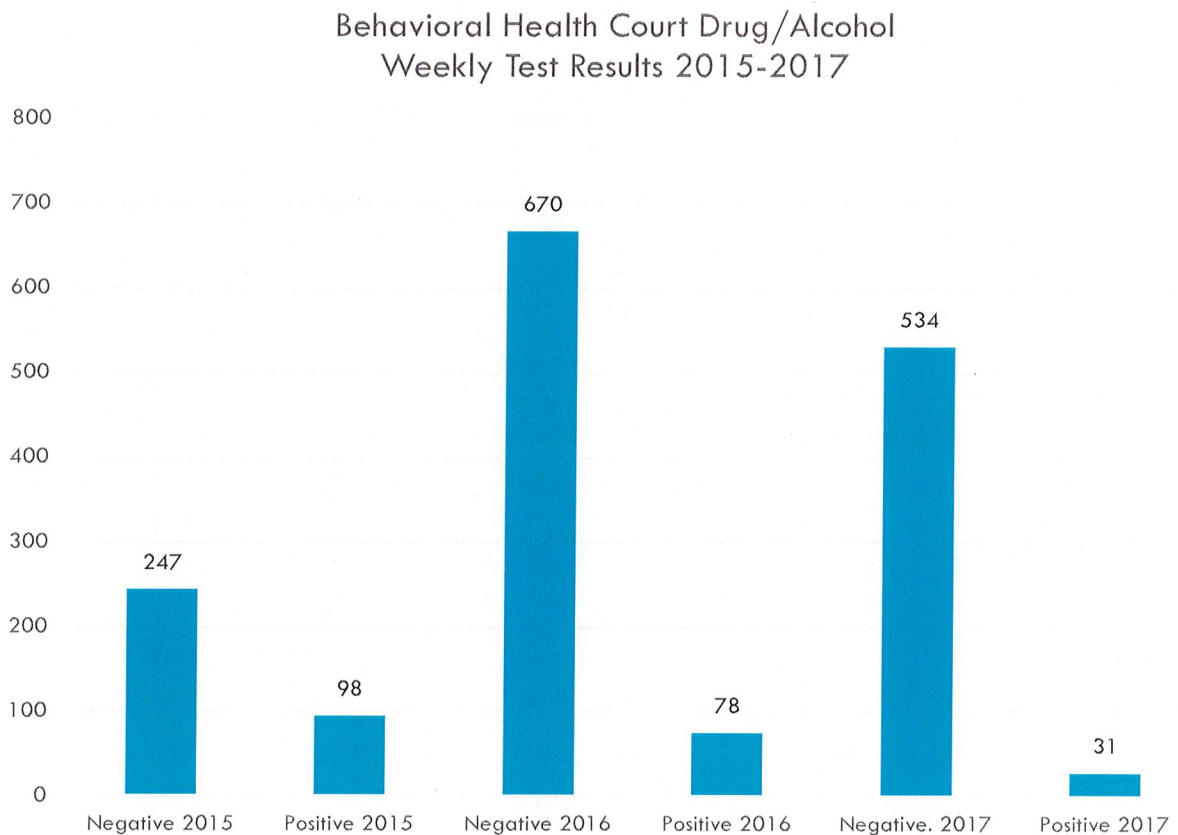
1. A well written Policy and Procedure Manual was developed and adopted in May of 2017. This Manual is comprehensive and readable, outlining program purposes, protocols and roles and responsibilities of partner agencies and participants. It contains the following sample forms: Guidelines for Participants; Agreement to Participate; Consent for Release of Confidential Information and Participant Status Report. The Authorization for Release has the heading: "Mendocino County JAG Grant Program." (This heading should be removed as the program continues to operate.) All other material in this document is appropriate for ongoing use by the BHC. It closely reflects standards of practice of model behavioral health courts.
2. Pre-Court staffing by the BHC Team is among the protocols outlined in the Policy and Procedure Manual. This protocol establishes the expectation of the Court of collaborative participation in joint staff meetings attended by the Judge of the BHC; BHC Coordinator; Individual Care Managers; representatives of the following offices: District Attorney. Probation and Public Defender; community-based providers and appropriate staff. The purpose is to review progress reports and resolve differences before entering the courtroom.
3. Three community-based organizations (Manzanita Services, MCAVHN and Mendocino Coast Hospitality Center) provided direct behavioral health services to clients of the BHC throughout the grant period. Grant funding was provided in limited amounts and served primarily to promote access to services from these partner providers. Medi-Cal was a source of reimbursement for medically necessary treatment services. Oversight of these agencies as well as responsibility for mental health care for all age groups was transferred from OMG to RQMC in June 2016. RQMC was able to provide verification of 2,480 hours of rehabilitative, case management and other clinical services to 48 clients during the grant period (see chart, next page). Quarterly reports to BSCC also verified provision of assessment, plan development and case management services.

**MEDI-CAL BILLABLE CLINICAL SERVICES 3/15/15-10/31/17
REPORTED BY REDWOOD QUALITY MANAGEMENT
(INCOMPLETE DATA PRIOR TO 6/2016)**

REDWOOD QUALITY MANAGEMENT DATA	NUMBER OF CLIENTS THIS SERVICE	TOTAL MINUTES PER SERVICE	TOTAL HOURS PER SERVICE	AVERAGE HOURS PER CLIENT
ASSESSMENT	30	7,691	128	4.25
CASE MANAGEMENT	40	38,503	642	16
CRISIS INTERVENTION	10	5,796	97	9.7
FAMILY THERAPY	1	437	7	7
GROUP REHAB	10	6,871	115	11.5
INDIVIDUAL REHAB	36	65,379	1090	30.25
INDIVID. THERAPY	23	17,226	287	12.5
COLLATERAL	10	1,958	33	3.5
MEDS MANAGEMENT	3	350	6	2
PLAN DEVELOPMENT	32	4,516	75	2.5
TOTAL	48 CLIENTS	148,277	2,480	52

4. Data provided by RQMC seemed to indicate that medication management services were lightly utilized. (Three clients out of 48, for an average of only two hours.) This was a surprising statistic, as psychiatric medications are often a helpful tool in recovery and stabilization. This turned out to be an anomaly of reporting: Mendocino County Behavioral Health (not RQMC) was responsible for medication management during the period of the grant, except for youth ages 18-25. RQMC reports that most current BHC clients are taking medication.

5. Routine testing for the use of illegal substances was funded through the Probation Department and increased over time with stronger than anticipated results. During 2015, tracking data showed that 72% of the 345 tests given were clean (without illegal substances). Of the 748 tests given in 2016, clean tests jumped to 90%. In the final year of the grant, with 565 tests given, a notable 95% were free of illegal substances. This far exceed the stated goal of 80% by year 3. Mendocino County Substance Use Disorders Treatment Services worked with ten clients referred for treatment. All but two graduated the program.



6. The BHC Team worked on the problem of delays in enrollment into the program. Data was collected to show days from arrest to enrollment in the program. This was determined to be an average of 4.5 months and considered unacceptable. Comparison data was developed showing days from arrest to referral to the program with days from referral to enrollment in the program. Data reflects an average of 6 days to complete this process, with 50% of participants being enrolled on the same day they were referred. In reviewing the referral process, it is apparent that the term "referral" has a specific meaning – clients are typically screened well before they are ready for referral and assessment. "Referrals" are made

once the client is perceived as ready to be assessed. This means that outstanding criminal matters, questions of competency and/or any impediments to focusing on matters of stabilization and recovery are resolved. For this reason, timing of arrest to referral is slow, while referral to enrollment is typically rapid.

SURVEY OF PARTICIPATING PROFESSIONALS

1. At the end of the grant period, BHC staff distributed a detailed 3-page survey for anonymous completion by participating professionals. Twenty-three surveys were returned.
2. Responses to survey questions are being used to inform future improvements in the BHC.
3. Responses indicated a wide variability in satisfaction with various elements of the BHC. There was, however, nearly unanimous report of a high level of satisfaction on one item: "The value of this program to its participants." Several respondents additionally commented on the rewards of seeing clients turn their lives around.

RECIDIVISM OUTCOMES

Offenses Committed By 32 Graduates:		Offenses Committed by 78 Non- Graduates:	
Times Offended After Exit	Most Recent Case Status After Exit	Times Offended After Exit	Most Recent Case Status After Exit (# of clients)
12	VOP Only	48	VOP Only (8)
2	Civil	3	FP (2)
1	DEJ	8	SP (2)
5	Active	6	BW (2)
11	Active	12	CJ (2)
10	VOP Only	3	SI (1)
1	Prison	41	Active (3)
1	CTS	6	IOJ (3)
		11	1368 (1)
		1	CS (2)
		1	Prison (1)
Total offenses = 43	8 clients Average=5.4	Total offenses =140	27 clients Average=5.2

FP - Formal Probation; Active - court case(s) currently active; SP - Summary Probation; DEJ - Deferred Entry of Judgment; BW - Bench Warrant; CJ - County Jail; IOJ - In the Interest of Justice (Dismissed); CTS - Credit for Time Served; VOP-Violation of Probation; 1368-Competency to Stand Trial

Of 32 graduates, 8 re-offended during the period of the grant for an average of 5.4 times; Range 1-12 offenses; mode=1 (3 had only one offense). One person went to prison; one person had two civil (and no criminal) offenses; two were still active in the program at the end of the grant; 22 of the 43 offenses were Violation of Probation only. These offenses resulted in a total of 6 arrests for 5 graduates. (Two clients with VOP only were returned to jail without new arrests.) Data on incarceration showed 75% of graduates with zero days of incarceration post-graduation.

Of non-graduates, 27 clients were reported to have re-offended, resulting in 44 arrests for 20 of these clients. Data on incarceration showed 25% of non-graduates with zero days of incarceration post-graduation.

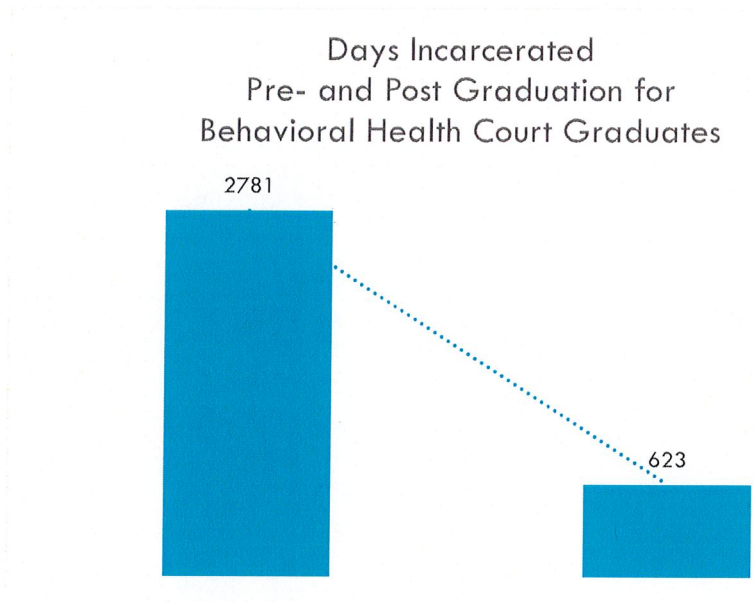
Status of Clients with new offenses	Number of clients arrested	Rate of arrest	Number of arrests	Average number of arrests
Graduates (32 clients)	5	15.6%	6	1.2 per client
Non-graduates (78 clients)	20	25.6%	44	2.2 per client
Total	25		50	

From data provided by Mendocino County Sherriff's Office:

Status	Days in custody before graduation	Days in custody after graduation	Total days in custody	Cost of incarceration 12/2017 @ \$115/day	Average cost of incarceration
Graduates (N=32)	22781	623	3404	\$391,460	\$12,333
Non-Graduate (N=47)			10,871	\$1,250,165	\$26,600

OUTCOME DATA

BEHAVIORAL HEALTH COURT IMPACT ON RECIDIVISM:



DEVELOPMENT OF A STABLE AND STRUCTURED BEHAVIORAL HEALTH COURT:

OBJECTIVES AS LISTED IN LOCAL EVALUATION PLAN	NOTES ON MEASUREMENT	OUTCOMES
Time from arrest to: a. Referral to the BHC court b. Psychological Stabilization c. Acceptance to BHC	Decision was made that referral not be made to MHC until client was ready to participate	Average of 14 weeks from arrest to referral, additional 4 weeks to acceptance.
How many defendants were referred to BHC (measured by calendar year)	Measured by grant period 3/2015 through 12/2017	131 defendants were considered for BHC in Ukiah and Ft. Bragg 03/2015 through 12/2017

OBJECTIVES AS LISTED IN LOCAL EVALUATION PLAN	NOTES ON MEASUREMENT	OUTCOMES
<p>How many defendants were found eligible and accepted into the BHC (measured by calendar year)</p> <p>a. How many cases were accepted (e.g. some defendants have multiple files)</p> <p>b. Breakdown of felony v. misdemeanor</p> <p>c. Breakdown in case type (drug, property, violence including vops)</p> <p>d. Breakdown by gender and age group (18-24) (25-59) (60 and over)</p>	<p>b. Breakdown of felony v. misdemeanor not tracked.</p>	<p>a. 110 defendants were found eligible and accepted into BHC of a total of 131 considered</p> <p>c. See chart of case types</p> <p>d. 89 Males, 41 females ages: 18-24 = 20 29-59 = 56 60 & older = 6</p>
<p>How many referrals were not accepted?</p>	<p>All requests were considered for appropriateness</p>	<p>12 potential clients did not participate, 3 were rejected by the court</p>
<p>Number of Behavioral Health Court appearances and corresponding event descriptions From Arraignment to Disposition</p>	<p>This data has not been reported.</p>	
<p>How many participants successfully completed the program (measured annually)</p> <p>a. Number of Case Dispositions</p> <p>b. How many participants were ejected from the BHC</p> <p>c. Reasons for Ejection</p>	<p>Aggregate data for grant period reported</p>	<p>32 participants successfully completed the program. Terminations are not always "ejections" and can be for a variety of reasons. Substance use, criminal behavior and failure to actively participate are reasons for involuntary termination.</p>
<p>Recidivism rates for individuals after completing the BHC (measured in years 2 and 3)</p>	<p>Data also includes year one</p>	<p>15.6% recidivism rate for BHC graduates (program completed)</p>

OBJECTIVES AS LISTED IN LOCAL EVALUATION PLAN	NOTES ON MEASUREMENT	OUTCOMES
<p>Create stabilizing structure by:</p> <ul style="list-style-type: none"> a. Hiring Court Coordinator; b. Producing Policy and Procedures Manual, c. Implementing data collection and case management systems d. Producing required progress reports 		<ul style="list-style-type: none"> a. Court Coordinator hired 3/2015 b. P&P Manual approved 5/2017 c. Data collected by Analyst and Court Coordinator d. Quarterly Reports submitted by Analyst and Court Coordinator
Measure positive tests for illegal substances		1,658 tests administered; 95% negative by year 3
Review and update treatment plans in a timely way when client has major changes (maximum 30 days to complete)	Not formally measured, Timeliness is required by agency contracts.	Not tracked on a case-by-case basis. This is an ongoing focus of quality management review for RQMC contractors and staff
Expand BHC to Ten-Mile Court in Ft. Bragg (2016) goal of increased enrollment (2017)		BHC established at Ten-Mile 2016 Enrollment decreased in 2017
Target 80% reduction in positive illegal substance tests for BHC clients 2016, 2017)		Use of illegal substances decreased 90% in 2016 and 95% in 2017 among BHC clients tested

RECOMMENDATIONS AND FINAL COMMENTS

Over the period of the JAG/Byrne Grant led by Judge Ann Moorman and the MPARS Steering Committee, Mendocino County was able to achieve two admirable public policy goals: 1. Giving 110 offenders who suffer from mental illness opportunities to learn to manage their illness outside of jail through access to a collaborative justice system team and targeted treatment resources and 2. Reducing system burdens by reducing arrests and days of incarceration by 75% for 32 graduates of the Behavioral Health Court program.

Recommendations for the future include:

- Work with the County Administrator, relevant Department Heads and the Superior Court to budget sufficient resources to maintain the BHC.
- Engage with the Behavioral Health and Recovery Department to explore access to Mental Health Services Act (MHSA) resources to address BHC clinical oversight. This is an additional function to "Adult Mental Health Services" and local Behavioral Health Departments are typically active in the BHC agency partnerships. MHSA law specifically identifies reduction in time incarcerated as a goal and appropriate use of resources.
- Review and consider revising the referral process. There has been informal early engagement from several sources (e.g. Medical staff at the jail) and these resources give support and encouragement to offenders with mental illness. Identifying and referring offenders to the BHC team early in the process should be explored.
- Explore accessing "Measure B" funds to fund mutual training for professionals involved in MHC. Lead staff from the Court, District Attorney; Public Defender; Corrections; treatment staff; etc. could provide training on their roles and challenges. "Lived experience" presentations from BHC graduates and/or their family members would be both informative and inspiring. Mutual training can both develop and strengthen the BHC team.

Finally, I would like to thank Kathryn Cavness, Senior Analyst for the District Attorney's office, for working diligently with me to refine the available data; Captain Tim Pierce of the Mendocino County Sheriff's Office for providing incarceration rates and cost data; Tim Schrader at Redwood Quality Management for information on the provision of direct treatment services; and Presiding Judge, Hon. Ann Moorman for providing substantial background information and sharing her inspiring vision for Mendocino County's Behavioral Health Court.

Attachments
to Submission of Hon. Lawrence Brown

The Impact of Mental Health Court: A Sacramento Case Study

Prepared for the Faculty Fellows Research Program
Center for California Studies
California State University, Sacramento
October 6, 2017

Dr. Yue (Wilson) Yuan
Assistant Professor
Department of Justice Studies
San Jose State University
One Washington Square
San Jose, CA 95192-0050
408-924-2698
wilson.yuan@sjsu.edu

Dr. Matthew Capriotti
Assistant Professor
Department of Psychology
San Jose State University
One Washington Square
San Jose, CA 95192-0120
408-924-5641
matthew.capriotti@sjsu.edu

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The Impact of Mental Health Court: A Sacramento Case Study

Abstract

Mental health courts (MHCs) are a collaboration between criminal justice agencies such as the District Attorney's office, the Probation Department, the court, the Public Defender's Office, and mental/behavioral healthcare systems. The aim of this report is to investigate the impact of the Sacramento MHC. Although the Sacramento MHC has been operating for several years, an empirical study is necessary to address its effectiveness. We used both quantitative and qualitative data to understand how the MHC influenced individual participants' recidivism rates and quality of life, and how MHC stakeholders view this collaborative court. Results from the quantitative data analysis indicate that defendants had a lower rate of recidivism after the MHC program than before it. Moreover, graduates were less likely to get rearrested than non-graduates. These findings provide insight into the effectiveness of the Sacramento MHC.

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Introduction

In the American criminal justice system, the prevalence of offenders with mental illness has gained the attention of researchers and policy makers over the past two decades. In 2005, 56% of state prisoners, 45% of federal prisoners, and 64% of local jail inmates met the criteria for a psychiatric disorder and/or reported a mental health problem (James & Glaze, 2006). Moreover, Steadman et al. (2009) studied the prevalence of serious mental illness among jail inmates in Maryland and New York, and they found that 15% of male inmates and 31% of female inmates had serious mental illnesses. Research indicates that defendants with mental illness have historically been prone to recidivism and have low rates of adherence to mental health treatment requirements (Goldkamp & Irons-Guynn, 2000). To address mentally ill defendants' involvement in the criminal justice system, mental health courts (MHCs) have been operating in the United States over the past 10 years. MHCs are therapeutically oriented judicial approaches to solving jail overcrowding, tackling the increase of homelessness, and bridging gaps between the criminal justice system and community mental health treatment agencies.

To be more specific, MHCs are problem-solving courts that address these issues by sentencing convicted defendants to a program of probation-like monitoring and mental health treatment in the community, as an alternative to incarceration. MHC programs are growing in popularity across the United States in general, with 34 of 50 states in 2005 having at least one MHC (Redlich, Steadman, Monahan, Robbins, & Petrila, 2006). According to the federal Substance Abuse and Mental Health Services Administration (2016), there are more than 300 MHCs in the United States. In California specifically, 30 of 58 counties have established an MHC for adults and seven counties have established an MHC for juveniles according to the final report of the Mental Health Issues Implementation Task Force (2015). However, research on the

impact of MHCs on defendants' criminal behaviors has not progressed at the same speed as their application in the criminal justice system.

The Sacramento MHC began in 2007. It is a collaboration between the District Attorney's office, the Probation Department, the court, the Public Defender's Office, and the Sacramento County Division of Behavioral Health Services. The MHC focuses on reducing the recidivism of offenders with mental illness by addressing their mental health issues, including taking medication and/or attending therapy. At the same time, the MHC mandates offenders to address other issues such as substance abuse. Offenders with mental illness must sign a contract to participate in the MHC program, and the probation department supervises offenders' treatment progress. In contrast with the preadjudication model, the Sacramento MHC adopted the postadjudication model, in which offenders are convicted, but the court may not impose sentences (Griffin, Steadman, & Petrila, 2002). The court will not withdraw a participant's plea until he or she successfully completes the program requirements. If participants do successfully comply with treatment recommendations (made by behavioral health and agreed to by the court before the participant enters MHC), then they avoid incarceration. To date, more than 100 offenders with mental illness have participated in the MHC. Yet, the impacts of the Sacramento MHC remain unevaluated. This project studied recidivism rates among Sacramento MHC participants who exited the program in 2014 (both graduates and nongraduates). Additionally, we aimed to identify facilitators of, and barriers to, the Sacramento MHC's success, as discussed by key professional stakeholders and MHC participants.

The research design of this project involves statistical analyses of agency data and qualitative interviews with MHC participants and stakeholders. We believe that these methods could provide preliminary evidence on whether the MHC has significantly impacted participants'

outcomes and suggest avenues for future development of MHCs in Sacramento and other California counties. The findings of this report will enable stakeholders and policy makers to review the current MHC structures and their effectiveness systematically, and to make the improvements necessary to help mentally ill offenders to reenter society. The next section focuses on reviewing previous research on MHCs. We demonstrate the development, empirical evaluations, and challenges of MHCs in the United States. Then we describe the research design, data and methods, analytical strategy, and results. Finally, we discuss the implications of our findings, limitations, and recommendations for future research.

Literature Review

MHC Development

The development of MHCs in the United States follows the penal philosophy of therapeutic jurisprudence (Cosden, Ellens, Schnell, Yamini-Diouf, & Wolfe, 2003; Rottman & Casey, 1999; Wexler, 2001). In particular, Rottman and Casey (1999) pointed out that “the fundamental principle underlying therapeutic jurisprudence is the selection of a therapeutic option—an option that promotes health and does not conflict with other normative values of the legal system” (p. 14). They suggested that knowledge, theories, and mental health and related disciplines can be shape the law and the criminal justice system. More importantly, the criminal justice system should take account of defendants’ social, psychological, behavioral, and other related factors in solving critical issues including overcrowded jails and prisons and high recidivism rates. In the State of California, there are examples of therapeutic jurisprudence and problem-solving partnerships in collaborative courts such as drug court and MHC. Specifically, to reduce recidivism rates among drug-related offenders, drug courts brought offenders, caseworkers, treatment teams, and judges together (Steadman, Davidson, & Brown, 2001).

Similarly, the MHC also adopted the therapeutic approach to address mental stability and recidivism rates among offenders with mental illnesses.

There are several major factors in the development of MHCs, such as adjudication procedures, supervision, and sanctions for defendants. Redlich, Steadman, Monahan, Petrila, and Griffin (2005) reviewed the development of the MHCs in several states including California, New York, North Carolina, Nevada, and Florida. They identified four dimensions to distinguish between the development of first- and second-generation MHCs. For example, they found that first-generation courts (i.e., those that followed the original MHC model) often focus on misdemeanor crimes, while second-generation courts (i.e., those that expanded on the original MHC model) all accept felonies. They pointed out that early MHCs (i.e., most first-generation MHC courts) lacked a well-structured model, and offenders with mental illness were treated under drug court principles (see also Goldkamp & Irons-Guynn, 2000; Steadman et al., 2001). Moreover, first-generation MHCs usually rely on preplea adjudication models, but second-generation MHCs depend more on postplea adjudication models. For example, before MHC consideration, participants undergo trial, conviction, and sentencing in second-generation courts. In addition, second-generation MHCs use jail as a sanction more regularly than first-generation MHCs. Finally, second-generation MHCs tend to use MHC personnel and probation for supervision, while first-generation MHCs often rely on community providers.

Taken together, the similarities and differences between first- and second-generation MHCs' procedures, eligibility criteria, supervision, and sanctions reveal the development of this specialized court. More importantly, stakeholders and researchers have started to question the impact of MHCs on mentally ill defendants. We reviewed several empirical studies that examined outcomes of MHCs.

MHC Effectiveness

As we previously stated, MHCs aim to reduce recidivism and to increase the quality of life among participants (Goldkamp & Irons-Guynn, 2000); indeed, existing studies indicate that MHCs can and do achieve these goals. For instance, numerous investigations from both within and beyond California suggest that MHC participation has links with lower recidivism rates than traditional criminal court participation. Compared to individuals with mental illness participating in traditional courts, those in MHCs have demonstrated fewer postcourt arrests, longer average time until rearrest, and decreased severity of the repeat offenses that occur (e.g., Behnken, Arredondo, & Packman, 2009; Cosden et al., 2003; Hiday & Ray, 2010; McNiel & Binder, 2007; McNiel, Sadeh, Delucchi, & Binder, 2015; Moore & Hiday, 2006).

Notably, initial studies show comparable decreases in recidivism when perpetrators of violent crimes participate in MHCs (McNiel et al., 2015), indicating that the MHC model may be viable for a wide array of defendants. Along with reductions in recidivism, these same studies show that MHCs can have beneficial effects, compared to traditional criminal court, on participants' quality of life, as demonstrated by improvements in independent living skills, substance use, psychological distress, and global independent functioning (Behnken et al., 2009; Cosden et al., 2003; Steadman, Redlich, Callahan, Robbins, & Vesselinov, 2011). For example, Moore and Hiday (2006) studied recidivism patterns among individuals from one year before to one year after enrollment in MHC. They not only found that MHC participants have fewer new arrests, but also observed a decline in the severity of the rearrests.

MHC Challenges

Despite published reports indicating the beneficial effects of MHCs, substantial variability in effect size exists across studies, likely as a result of system-specific factors (see the

metaanalysis by Sarteschi, Vaughn, & Kim, 2011). For example, MHCs appear to have enhanced effects when the lead MHC judge has a good relationship with other participating parties (Bess, 2004); in contrast, MHCs may have decreased effectiveness when they meet with low-quality or difficult-to-navigate community mental health systems (Boothroyd, Mercado, Pothyress, & Petrila, 2005). In other words, the social and community context is important in evaluating the effectiveness of an MHC because the structures and cultures of MHCs vary by location. Moreover, we found that few studies have incorporated quantitative and qualitative data into evaluation studies of MHCs.

Scholars have also noted challenges in implementing MHCs (McGaha, Boothroyd, Poythress, Petrila, & Ort, 2002; Sarteschi et al., 2011; Steadman et al., 2001). For example, Steadman et al. (2001) argued that the current MHCs lack new resources including housing, health services, and other assistance. They pointed out that offenders with serious mental illness would benefit little if the MHCs mainly relied on a few passionate stakeholders. Moreover, researchers pointed out that empirical studies lack rigorous research designs to evaluate the effectiveness of MHCs (McNiel et al., 2015; Sarteschi et al., 2011). Specifically, few studies have used causal inference methods to address the selection bias in MHC studies (i.e., the possibility that the subset of individuals accepted into MHC had preexisting factors that would have also made them less likely to recidivate after participating in a traditional court).

Further, stakeholders stated that the current MHCs face several challenges. For example, McNiel and Binder (2010) reported the process and outcomes of a MHC from the perspective of 43 stakeholders of San Francisco MHC using semi-structured interviews (note: the San Francisco court is called a Behavioral Health Court, but we discuss it here as an MHC for consistency). They found that most professional stakeholders preferred MHC to a traditional criminal court.

However, stakeholders pointed to several challenging issues in MHCs, including ineffective selection of MHC participants, lack of resources in MHCs and collaborating agencies, participant substance use as a barrier to success, and the chronicity of mental illness. Stakeholders also pointed to the need for scientific evaluations for the short- and long-term impact of MHCs. Given these considerations, it is important to evaluate the effects of MHCs when new counties implement them (a) to determine the effectiveness of the MHC as functioning in the county in question, and (b) to identify barriers and keys to success to guide the refinement of the MHC in the county under study and the development of new MHCs in other counties.

Methods and Data

Research Design

This study involved a mixed-methods evaluation of the Sacramento MHC. The San José State University Institutional Review Board (IRB) approved all procedures. The Sacramento County Behavioral Health Research Review Committee also approved procedures that involved information relating to MHC participants.

The quantitative component of the study was a retrospective evaluation study using court records and police data from Sacramento County. The Sacramento MHC was open to individuals with diagnoses of serious mental illness (e.g., schizoaffective disorder, psychotic disorder, and posttraumatic stress disorder). Thus, we used a pre- and postcomparison research design in which we compared pre- and posttreatment outcomes. We defined the baseline period as the year prior to MHC enrollment. MHC staff provided data on participants' gender, age, race-ethnicity, and psychological diagnoses. The Sheriff's Department provided arrest records of individual defendants 12 months pre- and postenrollment. In summary, the quantitative data mainly contained public records such as gender, race, criminal records, and arrest histories.

In the qualitative portion of the study, we conducted semi-structured interviews with MHC stakeholders, including both professionals working in roles related to the MHC and MHC participants. The second author conducted interviews, which ranged from 31 mins. to 88 mins. in duration. The interview comprised a core set of questions we generated a priori, and follow-up questions as necessary to clarify participants' responses to the core questions.

After the interview, a research assistant with prior experience in qualitative research transcribed interviews from audio-recordings. The research assistant and the second author reviewed transcripts independently and generated a list of what they perceived as emerging themes in the interviews. Then, the two met conjointly to discuss themes, review samples in transcripts, and reconcile differences until they agreed on a working set of themes. As they reviewed new transcripts, the research assistant and the second author met periodically to discuss the adequacy of existing codes, to determine if they needed to add new codes, and to discuss scoring.

Participants

Quantitative analyses. The MHC treatment group consisted of 71 defendants who participated in the MHC from 2012 to 2014. This comprised all defendants who participated in or exited the MHC in 2014. During the study period, the first participant enrolled in the MHC program on January 31, 2012, and the last participant enrolled in the program on September 2, 2014. On average, MHC graduates participated in the MHC for 15 months ($SD = 3.73$); deleted participants participated for 10 months ($SD = 5.80$); and dropped participants participated for five months ($SD = 6.22$). Some 70.42% of participants successfully graduated from the program. The demographic characteristics of the sample are in Table 1.

Table 1

Descriptive Table

Category	<i>N</i>	Percentage
Gender	71	
<i>Male</i>	45	63.38
<i>Female</i>	26	36.62
Graduate Status		
<i>Deleted</i>	18	25.35
<i>Dropped</i>	3	4.23
<i>Graduated</i>	50	70.42
Race		
<i>Asian</i>	2	2.82
<i>Black/African American</i>	20	28.17
<i>Latino</i>	10	14.08
<i>Pacific Islander</i>	1	1.41
<i>White/Caucasian</i>	38	53.52
Age (Exit)		
<i>20-29</i>	21	29.58
<i>30-39</i>	17	23.94
<i>40-49</i>	13	18.31
<i>50-59</i>	15	21.13
<i>60-69</i>	5	7.04
Diagnostic Categories		
<i>Depressive Disorder</i>	6	10.53
<i>Schizophrenia</i>	14	24.56
<i>Psychotic Disorder NOS</i>	5	8.77
<i>Schizoaffective Disorder</i>	13	22.81
<i>Bipolar Disorder</i>	14	24.56
<i>Other</i>	2	3.51
<i>PTSD</i>	3	5.25
<i>Hospitalization (Pre-MHC)</i>		28.17
<i>Hospitalization (Post-MHC)</i>		23.94

The mean participant age at MHC program exit was 39.7 years ($SD = 12.5$, Range: 20-65 years). The sample was 63% male, and it included significant representation of individuals who identified as Caucasian (53%), African American (20%), and Latino (14%). Moreover, we reported the diagnoses of these defendants in Table 1: Depressive Disorder (10.53%), Schizophrenia (24.56%), Psychotic Disorder not otherwise specified (8.77%), Schizoaffective Disorder (22.81), Bipolar Disorder (24.56), Other (3.51%), and PTSD (5.26%).

Qualitative analyses. We invited 11 professionals to participate in semi-structured interviews, and seven agreed to participate. Interviewees included professionals working in the legal and criminal justice system ($n = 5$) and in behavioral health services ($n = 2$). The group of criminal justice professionals included representation from both the District Attorney's office and the Public Defender's office, as well as individuals participating in other roles. We also interviewed four MHC graduates (two men and two women).

Measurement

Recidivism. Following prior operationalization of recidivism (e.g., Herinckx, Swart, Ama, Dolezal, & King, 2005; Moore & Hiday, 2006), we included individual defendants' new arrests occurring during the year after the MHC intervention. We also calculated the number of arrests occurring during the year prior to the MHC enrollment. These figures include only arrests made in Sacramento County. *Graduate status* dates from when a participant dropped, was deleted from, or graduated from the MHC program during the study period. Staff from the Division of Behavioral Health of Department of Health and Human Services documented each participant's graduate status. *Demographic* variables include race, gender, and age. We recoded age into five age groups.

Analytical Strategy

As previously stated, we conducted a mixed-methods evaluation of the Sacramento MHC that includes quantitative evaluations of MHC participants' outcomes, as well as qualitative evaluations of the program's keys to success and pain points. To be more specific, we conducted statistical tests to examine whether participants had lower arrest rates after they participated in the MHC program than before participating. We used Stata 14 (StataCorp, 2015) for the statistical analyses. For qualitative analyses, we transcribed the interviews and subjected the transcripts to thematic analysis to identify emergent themes.

Results

Quantitative Findings

First, we conducted bivariate analyses to test for differences between demographic groups in the number of arrests one year prior to the MHC enrollment. There was no significant difference between males ($M = 2.10, SD = 2.17$) and females ($M = 1.80, SD = 1.36$); $t = 0.77, p = 0.43$. Further, there was no significant relationship between age groups and the number of arrests ($F = 1.03, p = 0.39$). In addition, we did not find a significant difference between White, Black, and other defendants ($F = 0.50, p > 0.05$).

Further, we tested whether there was a statistically significant difference between the number of arrests before ($M = 2.01, SD = 1.91$) and after ($M = 1.49, SD = 2.08$) the MHC program. The results revealed that the difference is statistically significant ($t = 1.97, p < 0.05$). Figure 1 illustrates the difference between the number of arrests before and after the MHC program by age group using a two-way quadratic prediction. The figure indicates that participants overall had a lower rearrest rate after the MHC enrollment, and that participants in their 40s were more likely to get arrested than other age groups.

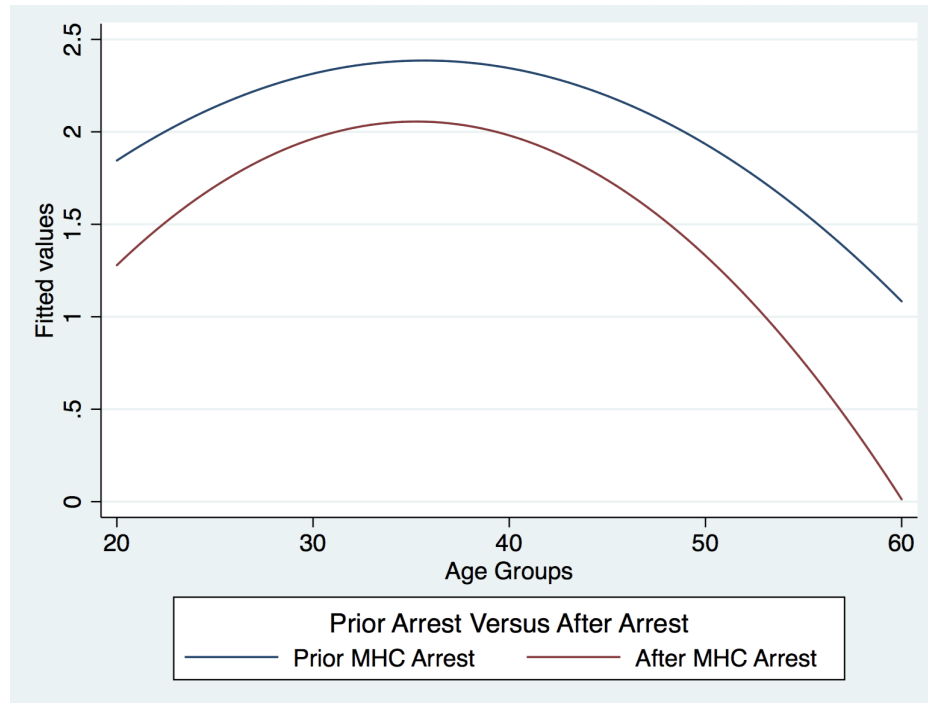


Figure 1. Number of arrests before and after MHC by age group.

We then conducted an independent samples t test to compare the number of arrests in the year after MHC enrollment. There was a significant difference in the arrests after MHC for graduates ($M = 0.80$, $SD = 1.43$) and nongraduates ($M = 3.14$; $SD = 1.58$); $t = 4.06$, $p < 0.01$. The Cohen's d (effect size from the d family) indicated that average arrests differed by approximately 1.30 standard deviations with 95% confidence intervals of 0.74 and 1.85. This indicates a very large effect size according to standard effect size benchmarks in the behavioral sciences (Cohen, 1988). In other words, compared to the arrest rates prior to the MHC enrollment, the rearrest rate difference between graduates and nongraduates one year after the MHC program was evident. As we reported above, we found no significant difference in the number of arrests prior to the MHC enrollment between graduates and nongraduates. Moreover, we found that there was no significant difference in the arrests after MHC according to gender (males: $M = 1.26$, $SD = 2.08$; females: $M = 1.88$, $SD = 2.08$; $t = 1.19$, $p = 0.23$). A one-way

ANOVA found no difference in recidivism rates according to ethnoracial group ($F = 0.45, p > 0.05$). ANOVA results showed that number of post-MHC arrests had a significant association with age group ($F = 4.54, p < 0.05$). Tukey's pairwise comparison test results (see Table 2) suggested that age group 40 has a higher arrest rate than other age groups.

Table 2

Tukey's Pairwise Comparison Test for Arrests by Age Groups

Age Group	Contrast	Std. Err.	<i>t</i>	<i>p</i> -value	[95% Conf. Interval]	
30 vs. 20	-0.19	0.62	-0.31	1.00	-1.93	1.55
40 vs. 20	1.96	0.67	2.92	0.04	0.08	3.84
50 vs. 20	-0.90	0.64	-1.39	0.63	-2.70	0.91
60 vs. 20	-0.83	0.95	-0.88	0.91	-3.48	1.82
40 vs. 30	2.15	0.70	3.07	0.03	0.19	4.11
50 vs. 30	-0.70	0.67	-1.04	0.83	-2.59	1.19
60 vs. 30	-0.64	0.97	-0.66	0.97	-3.35	2.08
50 vs. 40	-2.85	0.72	-3.96	0.00	-4.87	-0.83
60 vs. 40	-2.78	1.00	-2.79	0.05	-5.59	0.02
60 vs. 50	0.07	0.98	0.07	1.00	-2.68	2.82

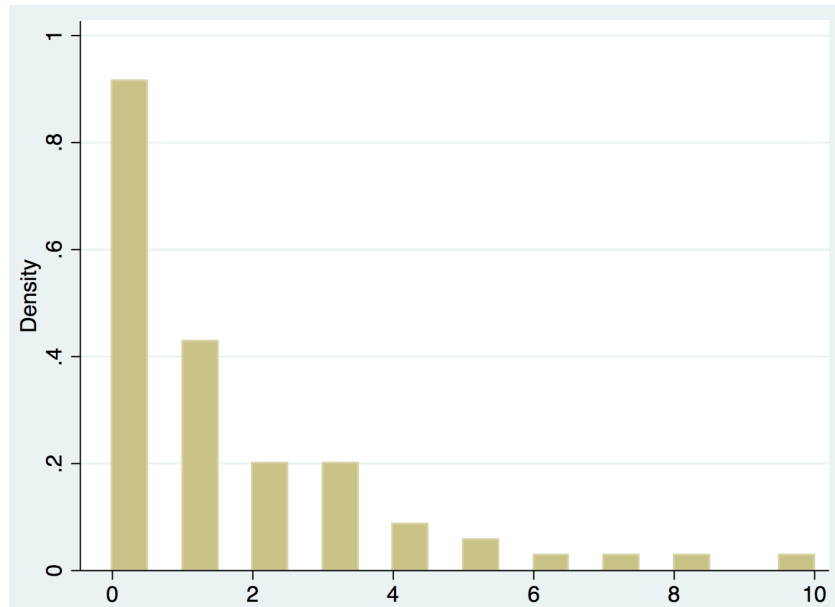


Figure 2. Distribution of the number of arrests after MHC enrollment.

Finally, we used negative binominal regressions to show how factors associated with the rate of rearrests. We used negative binominal regression because the distribution of the number of arrests was not normal (see Figure 2). Negative binomial regression results also validated the bivariate data analysis we reported above. Figure 2 shows that many participants had no arrests during the study period after they enrolled in the MHC.

Table 3 reveals four nested negative binomial regression models, and the results indicated that MHC graduates had a lower rate of rearrest than nongraduates. If a defendant were to participate the MHC program, his or her rate of rearrest should decrease by 25%, while holding all other variables in the model constant. Figure 3 illustrates that graduates had lower rates of rearrest after the MHC program than nongraduates. Individuals in the age range of 40 had higher rearrest rates than other age groups, which is consistent with results in Figure 1. Specifically, the incident rate for age group 40 is 2.2 times the incident rate for the age group of 20, holding the other variables constant.

Table 3

Negative Binominal Regressions for the Number of Arrests

	Model 1		Model 2		Model 3		Model 4	
	Coef.	Std. Err.	Coef.	Std. Err.	Coef.	Std. Err.	Coef.	Std. Err.
Intercept	1.15***	0.22	0.83***	0.26	1.64**	0.56	1.34*	0.58
Graduate	-1.37***	0.29	-1.22***	0.30	-1.18***	0.30	-1.25***	0.31
Age Groups								
20 (Reference)								
30			0.44	0.39	0.29	0.41	0.41	0.41
40			0.79*	0.33	0.68*	0.34	0.91*	0.37
50			-0.52	0.48	-0.66	0.48	-0.61	0.49
60			-0.47	0.70	-0.64	0.70	-0.40	0.72
Gender (Female)					-0.46	0.28	-0.40	0.28
Race								
Black							0.54	0.33
Other							-0.21	0.41

Results are based on 71 individuals.

*** $p < .001$; ** $p < .01$; * $p < .05$;

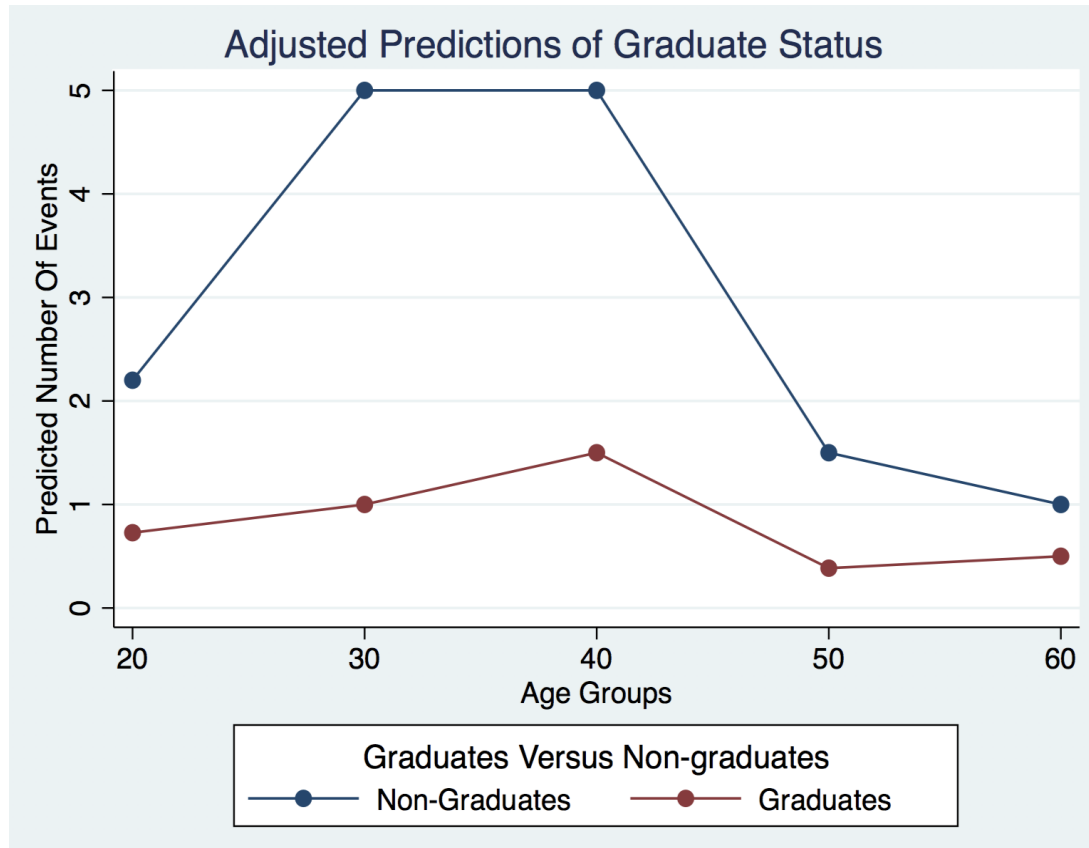


Figure 3. Predictions of the numbers of rearrests.

In addition, we examined the impact of MHC participation on rehospitalization. We found that 28% of the participants had at least one hospitalization in the year before their MHC enrollment, while 24% had at least one hospitalization after their MHC enrollment. The results from a test of proportion indicated that difference (4%) is not statistically significant ($p = 0.56$). We examined hospitalization days in the year pre-MHC enrollment and the year post-MHC enrollment. Distributions of hospitalization days were not normal, with a strong positive skew (preenrollment: Mean = 7.69, Median = 0, Skewness = 3.63; postenrollment: Mean = 10.05, Median = 0, Skewness = 4.12).

We tested the null hypothesis that there is no difference in the number of hospitalization days before and after the MHC enrollment using Wilcoxon matched-pairs signed-ranks tests

(Wilcoxon, 1945). The results ($p = 0.68$) failed to reject the null hypothesis that there is no difference in the number of hospitalization days pre- and post-MHC enrollment. We also tested that the median of the differences in the number of re-hospitalization between before and after the MHC enrollment is zero, and the results ($p = 0.85$) failed to reject the null hypothesis. Overall, within the entire sample, we did not find evidence to suggest that psychiatric hospitalization decreased in the year following MHC enrollment, relative to the year preceding MHC enrollment. We also evaluated differences in hospitalization patterns between MHC graduates and nongraduates. We tested whether MHC graduates had a lower probability of hospitalization than nongraduates using a logistic regression model. The results suggested that graduates had lower odds (decreased by 75%) of getting hospitalization than nongraduates.

In the year before MHC enrollment, there were no differences in the number of hospitalizations between future graduates and future nongraduates (i.e., medians were not statistically different at any level smaller than 36%). However, chi-square analyses revealed that MHC graduates were less likely to go into hospital in the year following MHC enrollment than were nongraduates ($\chi^2 = 4.47, p = 0.03$). We also compared the number of hospitalization days for graduates and nongraduates using Wilcoxon rank-sum tests. In the year prior to MHC enrollment, there were no differences in hospitalization days between graduates and nongraduates ($p = 0.22$). In the year following MHC enrollment, there were differences in hospitalization days between these two groups ($p = 0.03$), such that graduates had fewer hospitalization days than nongraduates.

Qualitative Findings

Themes from interviews with professionals.

Facilitators of success. All interviewees cited the perceived benefits of the MHC program, as well as ideas for potential improvements. Several common themes emerged regarding facilitators of the MHC's success and barriers to its effectiveness. The professionals unanimously stated in interviews that they believed *effective collaborative relationships among justice partners* were integral to the MHC's success. Additionally, all the professionals cited the effective leadership of the *presiding judges* as a key facilitator of its success. One interviewee pointed out, more broadly, that, aside from this particular judge's high level of effectiveness, it seemed critical to have a single judge dedicated to running the court. Several interviewees also mentioned that offering *incentives* (e.g., gift cards; a switch to a biweekly, rather than weekly, court visit schedule) to motivate participants to comply with MHC recommendations was helpful in facilitating participants' success. They also cited the strategic use of sanctions as an important component of the system. Interviewees also mentioned that the *consequences* (e.g., spending a week in jail, assignment to work detail) of participant nonadherence to recommendations and failure to appear in court were a crucial motivating element for participants. One legal professional described the necessity of incentives and consequences as follows:

when people violate things that they can control, then punishment can be very effective. If it's a distal behavior, it's something you don't really control ... then punishment does nothing really to help change it. You have to have ... four incentives or positive things to every negative sanction you do to produce a positive outcome. What we're trying to do, is we're trying to change people's thought patterns, behaviors, so that they're not coming into the criminal justice system. (SAC001)

Several interviewees also stated that the *ability to provide transportation*, in the form of paratransit services and public transportation vouchers, facilitated many defendants' successful participation in the MHC.

With regard to individual-level facilitators, participants widely agreed that defendants who increased their *engagement in prosocial activities* (e.g., community service, peer mentoring within the mental health system) also tended to have better outcomes. *Positive family relationships* were also facilitators of defendant's success. In particular, facilitative family member characteristics were providing emotional support and allying to help defendants to adhere to MHC recommendations.

Barriers to success.

Systemic barriers. Professionals suggested a number systemic factors that functioned as barriers to the MHC achieving optimal impact. Common themes emerged with regard to several of these. Four interviewees cited *unavailability of secure, appropriate housing* for MHC participants as a barrier to success. Interviewees noted that participants with histories of illicit substance use often resided in areas with high levels of drug trafficking (due to restricted housing options), which they perceived increased the risk of relapsing into drug use.

Interviewees unanimously cited limited capacity for oversight by Probation Officers (due to staffing and funding limitations) as a systemic factor limiting the size and capacity of the MHC. Several interviewees who raised this point cited this factor as restricting the District Attorney's referral of certain types of defendants to MHC (e.g., those with violent charges who were receiving less intensive levels of behavioral health services), thereby limiting the scope of the MHC overall. Some legal professionals suggested that, aside from Probation Officers, behavioral health professionals could potentially provide such oversight, if more intensive

behavioral health services were more widely available to defendants. However, several other interviewees asserted that this was outside of the scope of behavioral health care practice, such that probation officers would perform this function best.

Additionally, three interviewees reported they believed that *procedural heterogeneity* in how courts handled MHC cases was sometimes a barrier to the courts achieving optimal impact. Interviewees perceived case-by-case inconsistencies in several areas, including (a) which defendants the District Attorney accepted into the MHC, (b) determination of graduation requirements, and (c) communication of graduation requirements to participants. No interviewee suggested that these differences seemed unethical or malfeasant, but rather the result of professionals best fulfilling the requirements of their roles in the MHC system. As we noted above, some saw the ability to link defendants with transportation services as a facilitator of success; thus, the *lack of ready access to transportation* may be a potential pitfall or barrier, at the level of both systems (e.g., areas with poor public transportation) and individuals (e.g., an individual who does not have access to private transportation or lives far from a bus stop).

Individual-level barriers. Professionals also noted individual-level factors they viewed as barriers to individuals' success in the MHC. Ongoing *substance use* was the individual-level factor they most commonly discussed as a barrier to participants' success. Interviewees also stated that defendants with very *low adaptive skills* (e.g., to engage in self-care or navigate public transportation) and/or who were experiencing particularly severe mental health symptoms that led to grossly disorganized patterns of behavior seemed to have difficulties in regularly attending MHC and adhering to treatment recommendations. Although interviewees cited the involvement of supportive family members as a facilitator to defendant success, *certain types of family*

patterns acted as barriers, such as relatives who “enabled” patterns of maladaptive behaviors and/or held attitudes that the defendant could “do no wrong.”

Suggested improvements. Professionals unanimously suggested that the MHC would benefit from more organized and efficient *evaluation of program outcomes* (e.g., recidivism). They noted that this would be helpful both for the knowledge generated per se, and for the ability to use these data to bolster support for external funding (e.g., via grants). Two interviewees noted the necessity of a contemporary data-management platform for tracking these services. One interviewee who was highly involved in data management for the Sacramento criminal justice system indicated that it was currently transitioning to a new system, and the interviewee was optimistic about this improving the integration of data management and tracking across departments. A behavioral health professional noted that it could be particularly helpful to integrate existing hard-copy behavioral health records with court records into a single database.

Professionals also unanimously suggested that the MHC would benefit from *increased access to Probation Officers* to provide oversight of participants (see also *Systemic Barriers* above). They also suggested that this addition would enable the MHC to take on a larger number and wider array of defendants, as well as easing pressure on behavioral health professionals to perform these functions. Finally, several interviewees said that the MHC might benefit from development of *protocols to specify the MHC’s operation* along various parameters. These might include guidelines for selecting participants, determining graduation requirements, communicating graduation requirements, and other procedural aspects of the MHC.

Themes from interviews with participants. Common themes regarding positive aspects of the MHC and facilitators of success emerged from interviews with participants. All participants discussed the idea of the MHC as a “caring court” (quotations here denote authors’

phrases, not interviewee quotes). Interviewees stated they felt that legal professionals in the MHC, including not just their attorneys but also the judge and other players, cared about them as people and wanted to see their lives improve. According to two interviewees, this experience, particularly the communication of caring from the judge, motivated them to attend MHC weekly and adhere to MHC treatment recommendations and legal conditions.

All interviewees noted that participating in the MHC increased their engagement with behavioral health services. Some, but not all, described taking psychotropic medications previously, before beginning MHC. They generally indicated that their adherence to psychotropic medications had increased with participation in the MHC. Participants also described benefitting from individual psychotherapy, group psychotherapy, experiential therapies (e.g., art and music), and substance use treatment services. Two participants specifically mentioned that they felt they particularly benefitted from a frequent drop-in activities center at one mental health agency. Two participants recommended that caseworkers have fewer clients, so that MHC participants would have more time to meet with their designated caseworkers.

Participants described significant personal benefits from MHC participation. These included improved relationships with family members (including children), increased community involvement, and engagement in educational/vocational programs. Participants reported that MHC participation yielded improved global mental health and decreased substance use (including both complete abstinence and highly increased moderation). Participants also described positive personal changes, such as an increased sense of personal responsibility, higher self-esteem, and hopefulness about the future.

Selected quotations highlighting the aforementioned themes are as follows:

Seventy percent of my life now is because of my experience in the mental health court. I now know how to handle my anger, how to handle my anxiety when I have a panic attack, when I have too much stress.... For all the experience I have in the mental health court, I am continuing to work with my psychiatrist on my therapy here in T-core. I have changed a lot and built a lot. (SAC301)

It's like I was getting help on both sides of the coin, where I had never gotten before. It made me want to do better for the court. I didn't want to disappoint the court. I didn't want to disappoint Judge [name] by using or relapsing. You know, there was a sense of ownership in it for me. (SAC303)

Instead of constantly causing trouble and taking, I want to give back to society in a good way and help those that have the same problems that I had before, to change and open up, and see what's going on with them so they have others. (SAC302)

Discussion and Conclusion

The purpose of MHCs is to help mentally ill defendants to reenter society, reduce criminal activities, and improve their quality of life. Our findings were consistent with previous studies showing beneficial effects of MHCs (e.g., Cosden et al., 2003; McNiel & Binder, 2007; Moore & Hiday, 2006). Specifically, we found that that defendants who participated in the MHC program had lower rates of reoffending rate after the MHC program than they did prior to the MHC enrollment. Herinckx et al. (2005) reported that the average number of arrests for participants dropped from 1.99 to 0.48 ($t = 17.73, p < 0.01$). Likewise, we found that the average number of arrests dropped from 2.01 to 1.49 ($t = 1.97, p < 0.05$).

We also found that MHC graduates had a lower rate of rearrest than nongraduates, though we saw no difference in arrest rate before MHC participation. This finding is consistent

with prior research. For example, Hiday and Ray (2010) reported that participants who completed the MHC program had a lower arrest rate ($M = 1.02$, $SD = 2.28$) than those who were ejected from the program ($M = 2.55$, $SD = 2.84$). Taken together, these findings suggest that MHC participation itself has an association with reduced recidivism. We hope that these findings provide guidance for MHC stakeholders in providing support for and helping defendants with serious mental illness.

Our findings show that most demographic variables did not have statistically significant associations with the number of arrests both pre- and post-MHC enrollment. Age group had a statistically significant association with recidivism rates, with individuals in their 40s being more likely to recidivate than those in other age groups. Future research is necessary to evaluate the robustness of this finding. If replicated, this may suggest that decision makers might consider age group as a predictor of recidivism in MHC participants. In all, the present findings support the effectiveness of the MHC across a demographically diverse array of defendants.

The qualitative portion of this study revealed generally positive stakeholder and participant attitudes toward the MHC, with noteworthy themes around suggestions for improvement. Overall, both stakeholders and participants described the MHC as benefitting the public good while improving the lives of defendants. Participants noted positive working relationships among professionals, as well as effective judicial leadership, as particularly salient keys to the MHC's successes. Both stakeholders and participants suggested that the drivers of MHCs' beneficial effects for participants were increased adherence to mental health treatment (including pharmacotherapy and psychosocial interventions), increased engagement in prosocial activities, and participants' positive relationships with MHC professionals, especially the judge. The most commonly cited area for improvement involved increased capacity of Probation

Officers to provide monitoring and oversight of MHC participants. Stakeholders also unanimously stated that the court would benefit from more systematic data tracking, data sharing, and evaluation of program outcomes.

Limitations and Recommendations

Although we were able to provide preliminary findings for the Sacramento Superior Court, there are several limitations in the current study, and we hope MHC stakeholders and researchers can address these limitations in the future. First, we were unable to create a control group or randomly to assign participants into treatment and control groups due to the retrospective nature of this study and stakeholder concerns about confidentiality and data sharing. In addition, the sample size is relatively small, which limited advanced statistical analyses. For example, we were not able to produce stable results using survival analyses to examine factors that influence the time to rearrest.

We make the following conclusions and recommendations based on present findings:

- 1) Participation in the Sacramento MHC appears to have an association with decreased recidivism, particularly for those who successfully complete and graduate from the program. Thus, the Sacramento MHC appears to be achieving its primary aim.
- 2) Post-MHC decreases in recidivism occurred across participants of different genders, ethnoracial backgrounds, and ages. Thus, the Sacramento MHC appears to be appropriate for a demographically diverse array of individuals.
- 3) Qualitative interviews with stakeholders suggested several avenues for improving the Sacramento MHC, namely:

- a. Increased allotment of Probation Officer time to the MHC would expand the capacity to monitor participants effectively. This may expand the MHC's capacity to accept a greater number and wider array of participants.
- b. Improved methods and infrastructure for evaluating Sacramento MHC outcomes. Systematic evaluation of Sacramento MHC outcomes did not occur for the first 10 years of the court's existence, and the present evaluation had limits due to its limited data collection and data sharing capacities. We recommend the formation of an ongoing evaluability and evaluation plan by MHC stakeholders, with involvement of internal or external program evaluation specialists, to include plans for the following:
 - i. Evaluating a meaningful control/comparison group of individuals participating in traditional criminal court.
 - ii. Assessing quality-of-life-related outcomes beyond criminal recidivism, such as employment, housing status, family relationships, and psychosocial functioning.
 - iii. Streamlining data management and data sharing between legal and behavioral health professionals (consistent with the Health Insurance Portability and Accountability Act).

In sum, the present findings recommend continuance of the Sacramento MHC, with an eye to expanding capacity along the dimensions we suggest herein.

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IMPACT OF MENTAL HEALTH COURT: A SACRAMENTO CASE STUDY

YUE (WILSON) YUAN, DEPARTMENT OF JUSTICE STUDIES, SAN JOSE STATE UNIVERSITY

MATTHEW CAPRIOTTI, DEPARTMENT OF PSYCHOLOGY, SAN JOSE STATE UNIVERSITY

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INTRODUCTION

- The development of Mental Health Court (MHC)
- The Sacramento MHC
 - The Sacramento MHC was established in 2007

LITERATURE REVIEW

- MHC Development
- MHC Effectiveness
- MHC Challenges

RESEARCH QUESTIONS

- This project aimed to study recidivism rates among Sacramento MHC participants who exited the program in 2014 (both graduates and non-graduates).
- Additionally, we aimed to identify facilitators of, and barriers to, the Sacramento MHC's success, as discussed by key professional stakeholders and MHC participants.

METHODS AND DATA

- This study involved a mixed-methods evaluation of the Sacramento MHC
- The quantitative component of the study was a retrospective evaluation study using court records and police data of the Sacramento County
- In the qualitative portion of the study, we conducted semi-structured interviews with MHC stakeholders, including both professionals working in roles related to the MHC, as well as MHC participants.

PARTICIPANTS

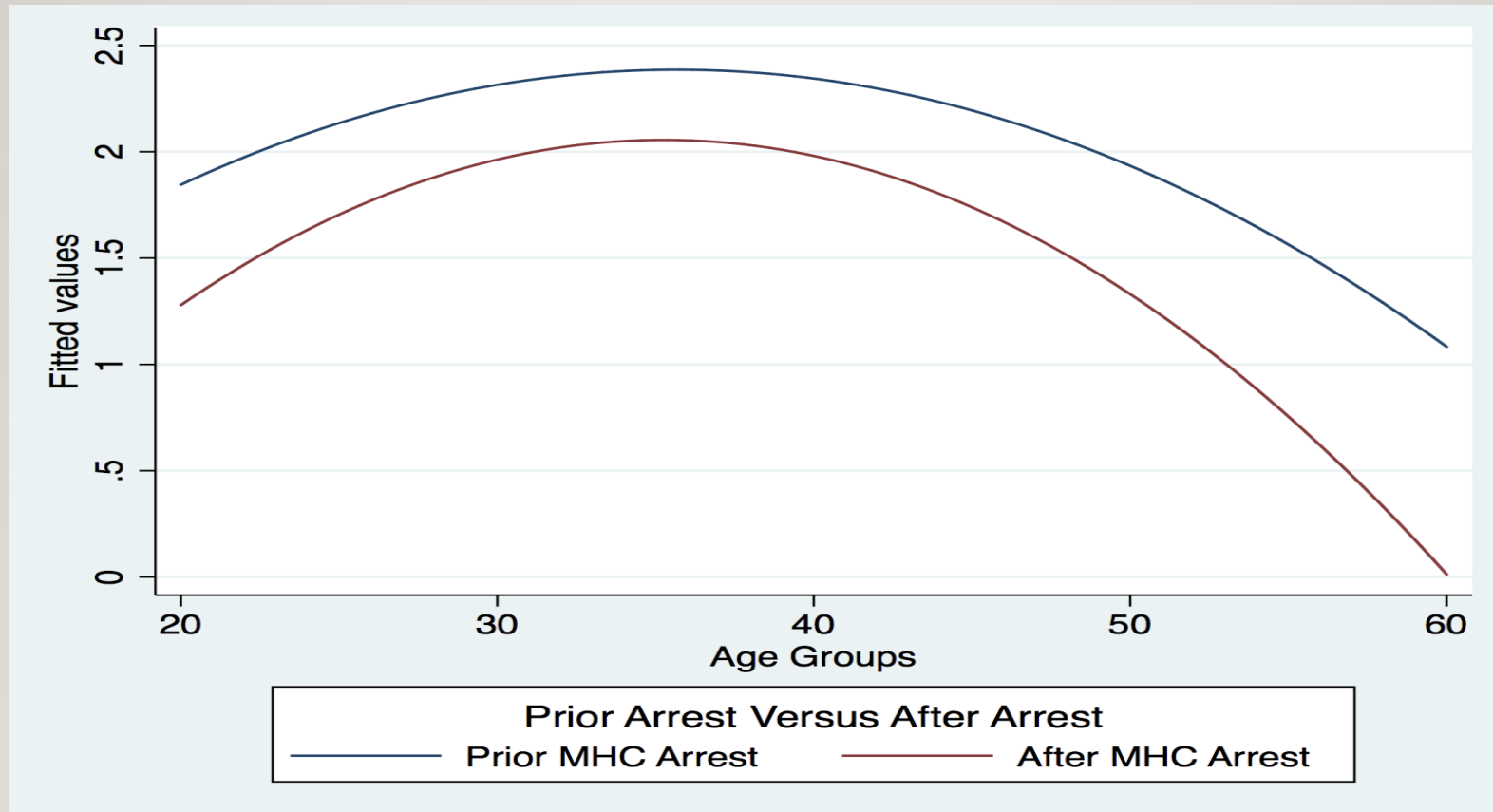
- The MHC treatment group consists of 71 defendants who were chosen to participate in the MHC from 2012 to 2014.
- This composes all defendants who participated or exited the MHC in 2014. During the study period, the first participant enrolled the MHC program on January 31, 2012 and last participant enrolled the program on September 2, 2014.

Table 1. Descriptive Table		
	N	Percent %
Gender	71	
Male	45	63.38
Female	26	36.62
Graduate Status	71	
Deleted	18	25.35
Dropped	3	4.23
Graduated	50	70.42
Race	71	
Asian	2	2.82
Black/African American	20	28.17
Latino	10	14.08
Pacific Islander	1	1.41
White/Caucasian	38	53.52
Age (Exit)	71	
20-29	21	29.58
30-39	17	23.94
40-49	13	18.31
50-59	15	21.13
60-69	5	7.04
Diagnostic Categories		
Depressive Disorder	6	10.53
Schizophrenia	14	24.56
Psychotic Disorder NOS	5	8.77
Schizoaffective Disorder	13	22.81
Bipolar Disorder	14	24.56
Other	2	3.51
PTSD	3	5.25
Hospitalization (Pre-MHC)		28.17
Hospitalization (After-MHC)		23.94

MEASUREMENT

- Recidivism. Following prior operationalization of recidivism (e.g., Herinckx, Swart, Ama, Dolezal, & King, 2005; Moore & Hiday, 2006), we included individual defendants' new arrests occurring during the twelve months after enrolled the MHC intervention.
- We also calculated the number of arrests occurring during the twelve months prior the MHC enrollment.
- Graduate status is measured by the date when a participant dropped, was deleted, or graduated from the MHC program during the study period. Staff from the Division of Behavioral Health of Department of Health and Human Services (DHHS) documented each participant's graduate status.

FIGURE 1.THE NUMBER OF ARRESTS BETWEEN PRIOR AND AFTER MHC BY AGE GROUPS



GRADUATE VS. NON-GRADUATES

- There was a significant difference in the arrests after MHC for graduates ($M=0.80$, $SD=1.43$) and non-graduates ($M=3.14$; $SD=1.58$); $t=4.06$, $p<0.01$.
- We found that there was not a significant difference in graduates and non-graduates in the number of arrests prior to the MHC enrollment.

FIGURE 2. THE DISTRIBUTION OF THE NUMBER OF ARRESTS AFTER MHC ENROLLMENT

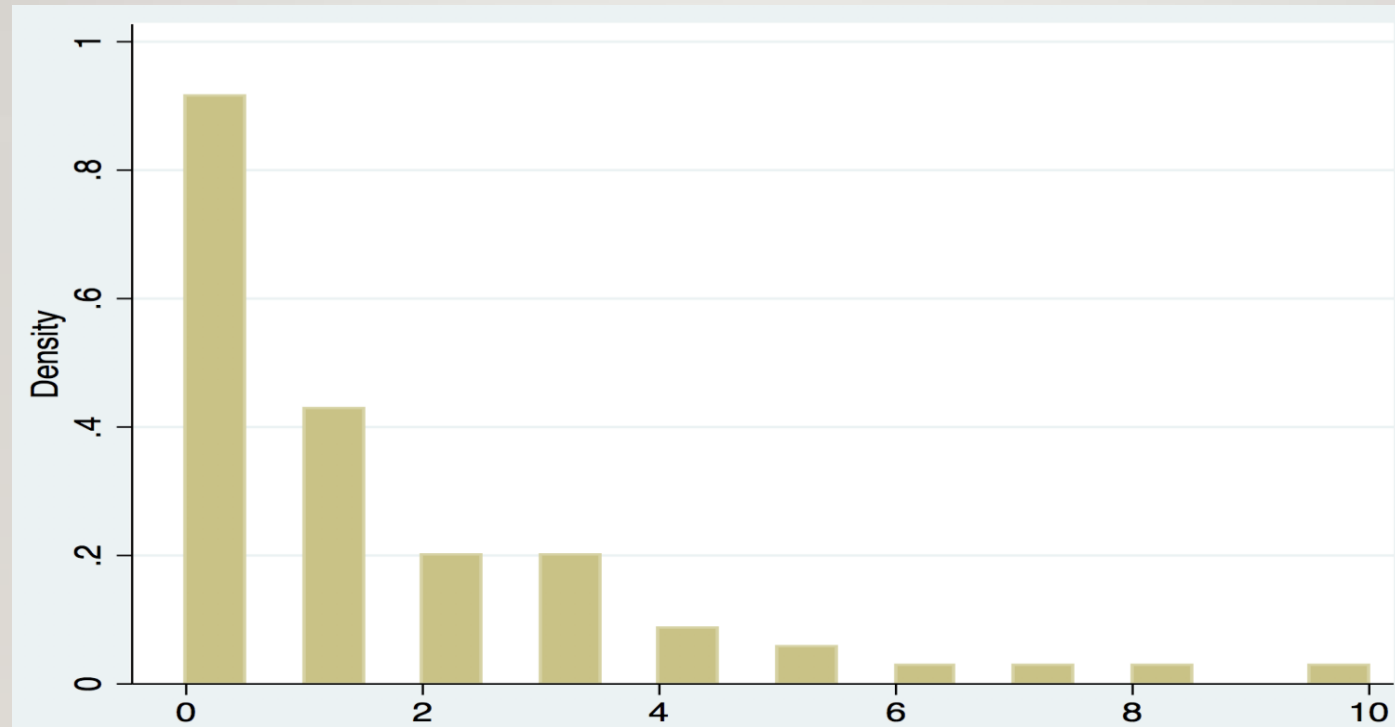
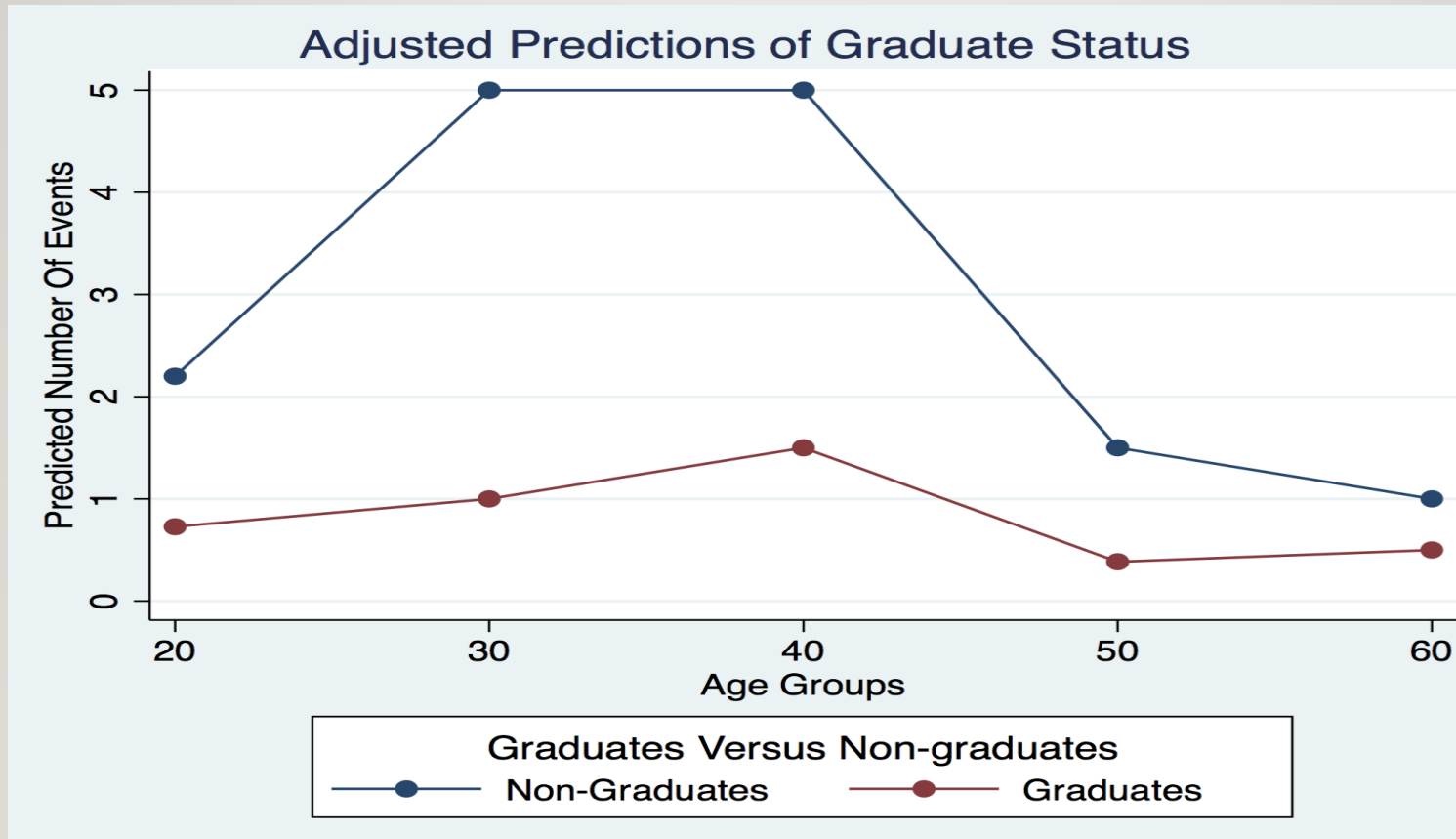


FIGURE 3. THE PREDICTIONS OF THE NUMBER OF RE-ARRESTS



RE-HOSPITALIZATION

- There were no differences in number of hospitalizations between future graduates and future non-graduates.
- MHC graduates were less likely to be hospitalized in the year following MHC enrollment ($\chi^2=4.47, p=0.03$).

QUALITATIVE METHOD

- 11 interviews
 - 5 legal professionals
 - 2 behavioral health professionals
 - 4 MHC participants.
- Transcribed, subjected to thematic analysis

PROFESSIONALS' PERSPECTIVES

SYSTEMIC FACILITATORS OF SUCCESS

- **Effective collaborative relationships** among justice partners
- **Leadership** of presiding judge
- Use of **incentives and consequences** to motivate participant engagement/compliance
- Ability to **provide transportation** to participants via paratransit and public transpo. vouchers

SYSTEMIC BARRIERS TO SUCCESS

- **Lack of secure, appropriate housing** for MHC participants
- **Limited capacity for Probation Officer oversight**
- **Procedural heterogeneity** in participant selection, grad requirements, and communication of requirements
- **Lack of transportation** for some participants

INDIVIDUAL LEVEL PREDICTORS OF SUCCESS/STRUGGLE

- Engagement in prosocial activities (+)
- Family relationships (+/-)
- Ongoing substance abuse (-)
- Low adaptive skills (-)

PARTICIPANTS' PERSPECTIVES

FACILITATORS OF SUCCESS

- **MHC as a “caring court”**
- **Increased engagement with behavioral health**
 - **Including increased med adherence, therapy participation**
 - **Use of drop-in activities center at MH agency**

SUGGESTED CHANGE

- **Decreased caseworker client load (i.e., greater caseworker time/availability to support).**

PERSONAL BENEFITS

- **Improved family relationships**
- **Increased community involvement**
- **Greater engagement in educational/vocational programs**
- **Improved mental health**
- **Decreased substance use (incl abstinence and moderation)**
- **Increased self-esteem and hope**

SELECTED QUOTES

“Seventy percent of my life now is because of my experience in the mental health court. I now know how to handle my anger, how to handle my anxiety when I have a panic attack, when I have too much stress.... For all the experience I have in the mental health court, I am continuing to work with my psychiatrist on my therapy here in [agency]. I have changed a lot and built a lot.” (SAC301)

SELECTED QUOTES

“It’s like I was getting help on both sides of the coin, where I had never gotten before. It made me want to do better for the court. I didn’t want to disappoint the court. I didn’t want to disappoint Judge [name] by using or relapsing. You know, there was a sense of ownership in it for me.” (SAC303)

SELECTED QUOTES

“Instead of constantly causing trouble and taking, I want to give back to society in a good way and help those that have the same problems that I had before, to change and open up, and see what’s going on with them so they have others.” (SAC302)

CONCLUSIONS AND RECOMMENDATIONS

I - DECREASED RECIDIVISM AFTER MHC PARTICIPATION

- Participation in the Sacramento MHC appears to have an association with decreased recidivism, particularly for those who successfully complete and graduate from the program.
- Thus, the Sacramento MHC appears to be achieving its primary aim.

2- DECREASED RECIDIVISM ACROSS DIVERSE PARTICIPANTS

- Post-MHC decreases in recidivism occurred across participants of different genders, ethnoracial backgrounds, and ages.
- Thus, the Sacramento MHC appears to be appropriate for a demographically diverse array of individuals.

3- AVENUES FOR IMPROVEMENT

- All stakeholders described positive and desirable aspects of the MHC. Avenues for improvement also emerged

3A- INCREASED PROBATION OFFICER RESOURCES

- Increased allotment of Probation Officer time to the MHC would expand the capacity to monitor participants effectively.
- This may expand the MHC's capacity to accept a greater number and wider array of participants.

3B- SYSTEMATIC DATA COLLECTION AND EVALUATION

- More purposeful evaluation planning
 - Strategizing for a control group in traditional courts
 - Assessing quality-of-life related outcomes
 - Streamlining data management and sharing between legal and behavioral health

DISCUSSION AND QUESTIONS

Attachment
to Submission of Hon. Stephen Manley



The Prevalence of Mental Illness in California Jails is Rising: An Analysis of Mental Health Cases & Psychotropic Medication Prescriptions, 2009-2019

February 2020

Topline Findings

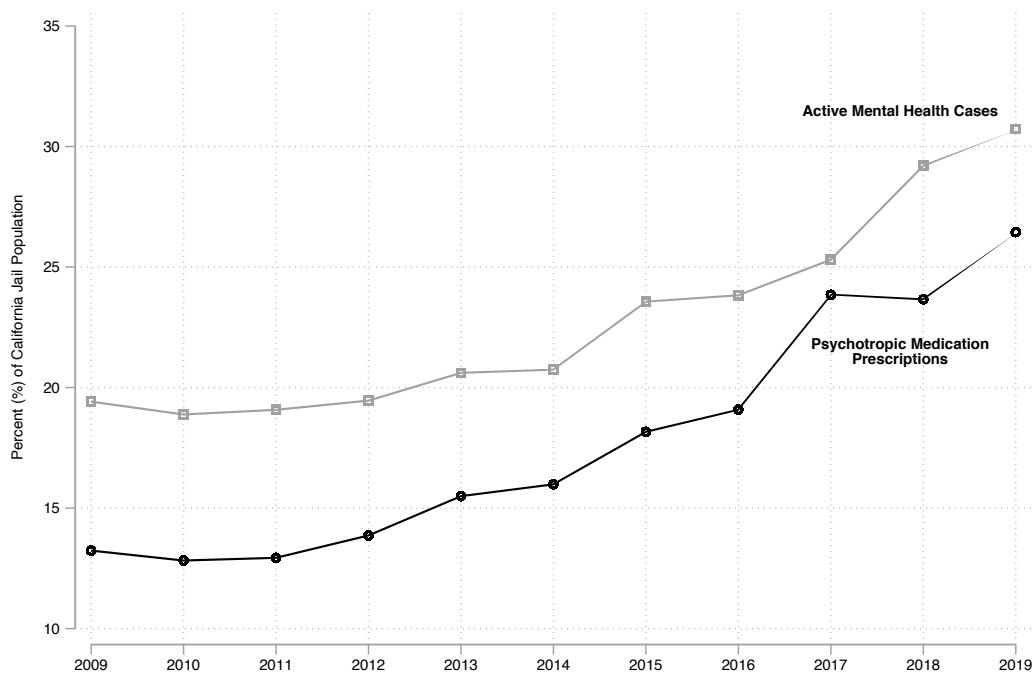
In this brief we use data from the Board of State and Community Corrections (BSCC) to estimate the relative prevalence of mental illness among jail-incarcerated individuals in California over the past ten years. We reviewed data from counties that completed the BSCC Jail Profile Survey (JPS) between 2009 and 2019. On average, we used data from 50 counties each year for our analytical sample.

Based on our sample, the share of the California statewide jail population either with an active mental health case or a prescription for a psychotropic medication increased significantly between 2009 and 2019 (see Figure 1 on the next page):

- **Active Mental Health Cases.** On the last day of any given month in 2009 there were roughly 80,000 people in jail custody throughout California and 15,500 people with an active mental health case. On the last day of any month in 2019 there were approximately 72,000 people in jail custody and 22,000 people with an open mental health case. This represents a 42 percent increase in the number of active mental health cases. In addition, the proportion of incarcerated people in California jails with an active mental health case rose by approximately 63 percent, rising from 19 percent in 2009 to 31 percent in 2019.
- **Psychotropic Medication Prescriptions.** In 2009, on the last day of any month, there were roughly 80,000 people in jail custody across the state and about 10,500 individuals receiving psychotropic medications. However, in 2019, on the last day of any given month, there were approximately 72,000 people in jail custody and roughly 19,000 individuals receiving these psychotropic medications. This represents an 80 percent increase in the total number of inmates receiving these medications. Moreover, the proportion of jail-incarcerated people throughout California with a psychotropic medication prescription roughly doubled from 13 percent in 2009 to 26 percent in 2019.

Although these JPS data pertaining to mental illness in jail are useful for estimating the prevalence of mental illness among the jail incarcerated population in California, these data are incomplete at times. In our report we provide specific, actionable recommendations to improve the overall data quality.

Figure 1. *Prevalence of Active Mental Health Cases and Psychotropic Medications, Statewide from 2009 to 2019*



Background

Data on mental illness among incarcerated populations is difficult to obtain. However, the available data, which mostly comes from surveys, suggests that mental illness in jail or prison is prevalent and that individuals with a mental illness are overrepresented in jail or prison. About 1 in 4 jail inmates self-reported experiences that met the threshold for serious psychological distress (SPD) in the 30 days prior to incarceration, according to the Bureau of Justice Statistics' 2011-12 National Inmate Survey.¹ In comparison, data from the National Survey on Drug Use and Health² found that only about 1 in 19 persons in the standardized U.S. general population met the threshold for SPD. In this study we rely upon administrative data from the state of California to estimate the prevalence of mental illness among the jail population. There are justifiable concerns about the prevalence of mental illness in jails and prisons.

- **Individuals experiencing mental illness are likely to remain incarcerated longer than their peers.** On average, individuals with mental illnesses receive sentences that are 12 percent longer than individuals convicted of the same crimes but without mental health diagnoses.³
- **Incarcerated people experiencing a mental illness are also more likely to be disciplined and isolated in segregated housing (i.e., solitary confinement).** Once in solitary confinement the harsh conditions of the segregation worsen the symptoms of mental illness. Moreover, not only are the mentally ill more likely to be placed in solitary confinement, they often find it exceedingly difficult to meet the requirements for release.
- **People with a mental illness diagnosis are more likely to commit suicide and/or be victimized.** Suicide is the leading cause of death in correctional facilities, and as many as half of all inmate suicides are committed by the estimated 15 to 25 percent of inmates with serious mental illness. Untreated mental illness can also contribute to violent victimization in custody. Individuals with serious mental illness in jail were five times more likely to report that they were sexually victimized by another inmate than individuals with no mental illness.⁴
- **It is expensive to incarcerate individuals with mental illnesses since jails in the United States are improperly equipped for treatment.** Correctional health care professionals are constantly constrained by limited or improper resources and large caseloads. Community mental health treatment is less costly and more effective than incarceration.⁵

¹ [BJS National Inmate Survey \(NIS\)](#).

² [SAMSHA National Survey on Drug Use and Health \(NSDUH\)](#).

³ Stanford Justice Advocacy Project. "[The Prevalence and Severity of Mental Illness Among California Prisoners](#)." 2017.

⁴ Bureau of Justice Statistics. "[Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-2012](#)." 2013.

⁵ The annual cost of incarcerating an average jail inmate in California is estimated at \$30,000, not including mental health care costs, while the cost of treating a person with mental illness in the community is approximately \$20,000, according to the Judicial Council of California report entitled "Task Force for Criminal Justice Collaboration on Mental Health Issues: Final Report" from 2011.

Methodology

Since 2002, the BSCC has conducted the Jail Profile Survey (JPS) to collect data regarding local agency jails and jail systems.^{6,7} County-wide data are gathered monthly and counties submit their data on a voluntary basis. In the monthly survey, counties are asked to report average daily population (ADP) for the month. ADP is the monthly average, excluding people on holding status. Importantly, the survey also requests that counties report the “number of inmates on the last day of the month who are receiving psychotropic medications for identified mental health disorders.” The survey also asks counties to report the “number of open mental health cases on the last day of the month.” Active (i.e., open) mental health cases are inmates identified as having a psychological disorder and who are actively in need of and receiving mental health services. The number of psychotropic medication prescriptions and the number of inmates receiving mental health services are counted on the last day of each month, and so they represent point-in-time counts.

We developed analytical samples of all California jails independently by both survey question and year. Furthermore, we generated two samples per year – one for our analysis of active mental health caseloads and another for our analysis of psychotropic medications. Jurisdictions that responded to the JPS questions about mental illness for at least two reporting periods during a given year are included in that respective analytical sample. Appendix A details which counties are included. We use data from the vast majority of jails across the state and the sample is diverse.⁸ The JPS data is incomplete at times and there are some notable issues that should be addressed with the survey series to improve its quality and usefulness. In this report we took a conservative, descriptive approach to our analysis that uses the maximum amount of the available non-missing data and summarizes it. In the final section of this report we offer recommendations to improve the data. We believe that the mental health data gathered from the JPS can be significantly enhanced with greater BSCC oversight.

In this report we use the results from this JPS series to better estimate the prevalence of mental illness in jail. We focus our analysis on the data gathered from the questions pertaining to (1) the month-end number of psychotropic medication prescriptions, (2) the month-end number of active mental health cases, and (3) the month-end jail population (i.e., ADP). From these questions we calculated both annual and statewide estimates for the following measures:⁹

- **Raw number (i.e., count)** of individuals with either an open mental health case or a psychotropic medication prescription;
- **Percent** of the jail population with either an open mental health case or a psychotropic medication prescription; and
- **Total Change (i.e., long-run change) in the percent** of the jail population with either an open mental health case or a psychotropic medication prescription.

⁶ The BSCC provides a “workbook” with instructions for reporting entities. [This form is publicly available.](#)

⁷ The BSCC administers the JPS using an Excel fillable form. [This form is also publicly available.](#)

⁸ The sample is diverse in terms of geographic coverage since counties from every region of California are consistently included. Moreover, the sample is diverse with respect to the underlying demographic makeup of the reporting county jails.

Statewide Findings

A growing number of jail-incarcerated individuals are experiencing mental illness in California. Moreover, the share of the statewide jail population experiencing some form of mental illness, as reported to the BSCC, has increased significantly since 2009.

Active Mental Health Cases

The raw count of open mental health cases in California jails increased by a total of about 42 percent between 2009 and 2019. In 2009 there were an average of approximately 15,500 open mental health cases on the last day of any given month, across all the jurisdictions in our sample. During 2019 there was an average of about 22,000 open mental health cases on the last day of any given month across all the reporting counties.

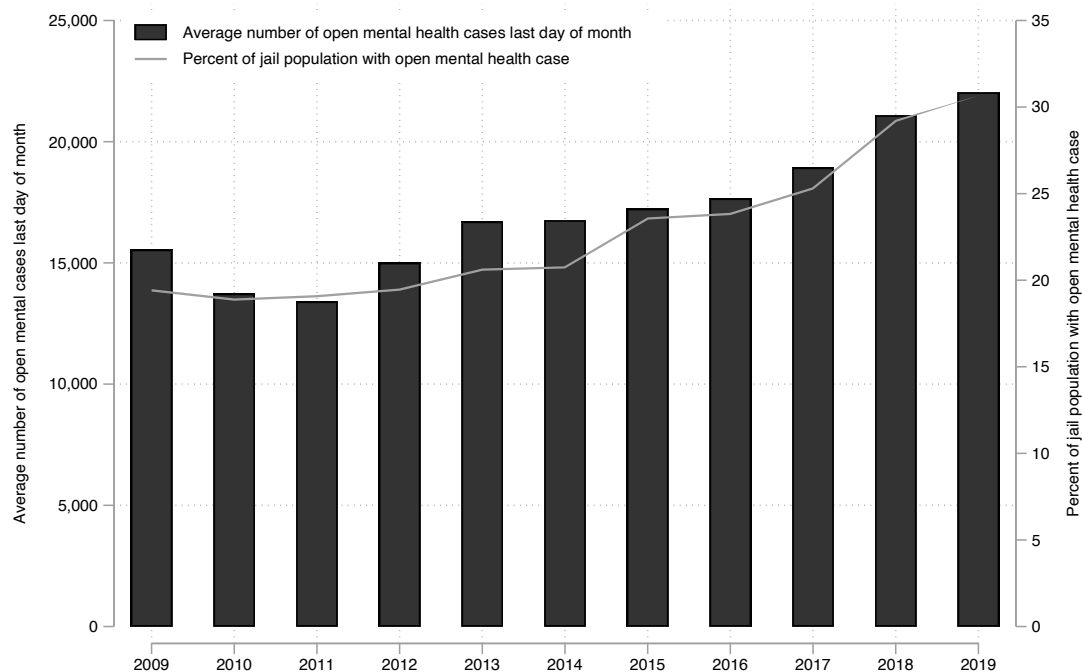
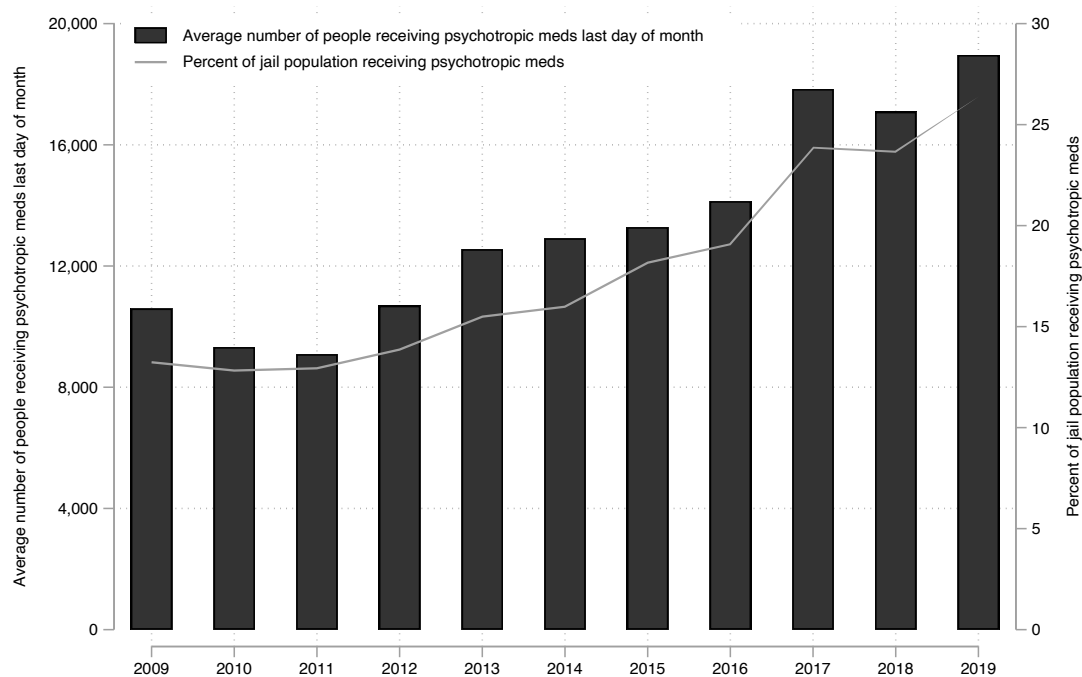
The percent of the statewide annual ADP with an open mental health case increased by 11 percentage points or about 62 percent. In 2009, approximately 19 percent of the annual ADP had an active mental health case across the jurisdictions that reported. During 2019 though, approximately 30 percent of the annual ADP had an open case in these same jurisdictions.

Psychotropic Medication

The raw number of incarcerated individuals receiving psychotropic medications increased by roughly 81 percent between 2009 and 2019. During 2009, there was an average of about 10,500 individuals on psychotropic medications on the last day of any given month across all the jurisdictions in this sample. During 2019,¹⁰ there was an average of 19,000 individuals receiving psychotropic medications on the last day of any given month across the same reporting jurisdictions.

The percent of the statewide annual ADP on psychotropic medications increased by 13 percentage points or about 100 percent between 2009 and 2019. During 2009, approximately 13 percent of the annual ADP received these medications across the jurisdictions that reported. In 2019, roughly 26 percent of the annual ADP received psychotropic medications throughout these same jurisdictions.

¹⁰ January 2019 to June 2019.

Figure 2a. *Estimated Count and Prevalence of Active Mental Health Cases Statewide, 2009 - 2019*Figure 2b. *Estimated Count and Prevalence of Psychotropic Medications Statewide, 2009 - 2019*

County Findings – Prevalence of Mental Health Indicators, 2019

The share of the county jail population experiencing some form of mental illness appears to differ significantly across the state. There is considerable variation in between jurisdictions with respect to the relative prevalence of both open mental health cases and psychotropic medications among the jail-incarcerated.

Open Mental Health Cases

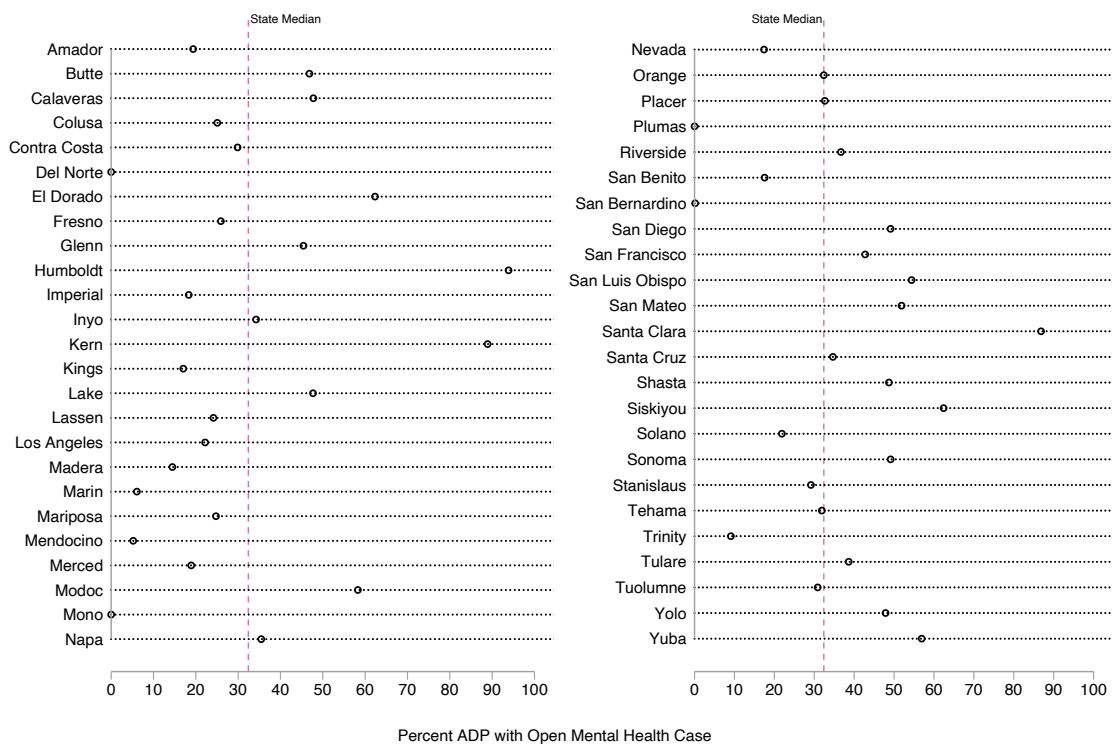
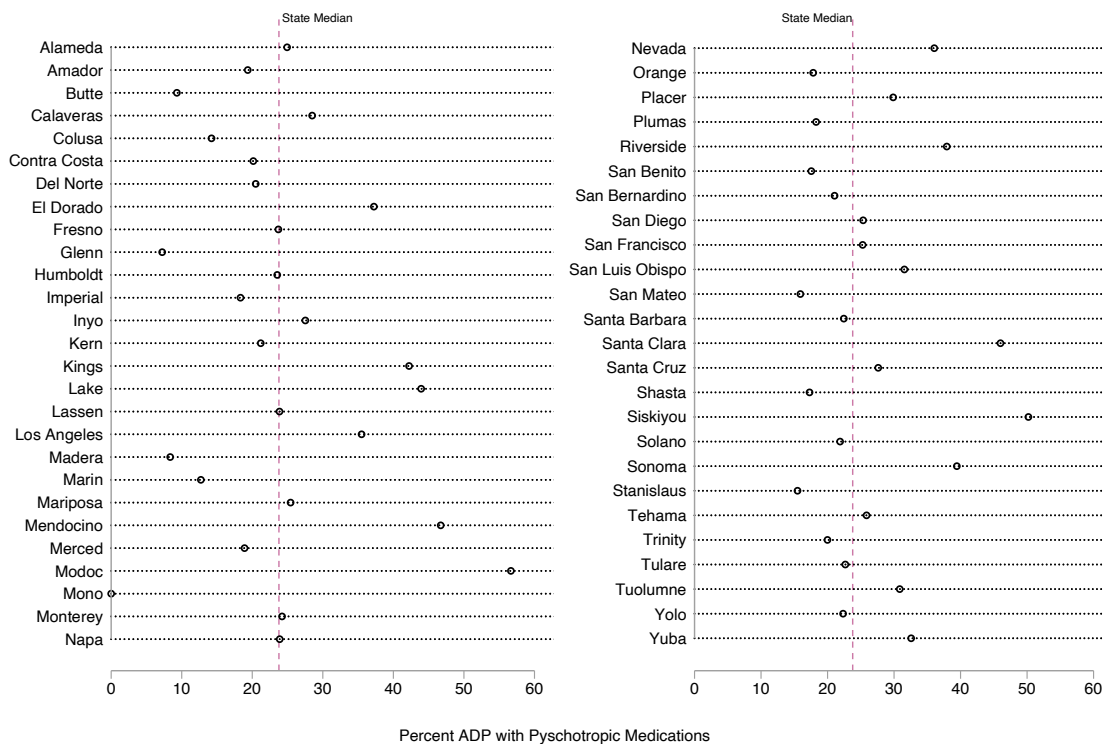
In 2019, the share of the jail ADP with an open mental health case varied across the state. In the median California county approximately 32 percent of the jail-incarcerated people have an open mental health case.¹¹ However, in Kern and Santa Clara County, roughly 86 to 88 percent of the ADP receive psychotropic medications. Conversely, in Trinity and San Benito County only about 9 or 18 percent of the ADP have an active case, respectively. About 45 percent of San Diego's jail population and 42 percent of San Francisco's have open cases.

Psychotropic Medications

In 2019, the share of the jail ADP receiving psychotropic medications varied widely between counties. About 23 percent of the jail population receives at least one psychotropic medication in the median California county.¹² However, in Modoc and Siskiyou County, roughly 50 to 56 percent of the annual ADP receives psychotropic medications. Conversely, in Glenn and Madera County only about 8 or 9 percent of the ADP receives psychotropic medications. In Los Angeles approximately 35 percent of the jail population receives psychotropic medications. Roughly 25 percent of San Diego and San Francisco's jail population receives some medications.

¹¹ Orange county was the “median” (50th percentile) jurisdiction in terms of the prevalence of open mental health cases amongst the jail population in 2019.

¹² Fresno county was the “median” (50th percentile) jurisdiction with respect to the prevalence of psychotropic medications amongst their jail population in 2019.

Figure 3a. *Percent of Jail Population with Active Mental Health Case in 2019*Figure 3b. *Percent of Jail Population Receiving Psychotropic Medications in 2019*

County Findings – Trends in the Prevalence of Mental Health Indicators, 2009-2019

Nearly all California jails have experienced a cumulative rise in the share of their incarcerated population with some mental illness. However, the amount of total change has been markedly different between jurisdictions.¹³

Open Mental Health Cases

Since 2009 California jails have experienced different amounts of total change in the estimated share of their jail population that requires behavioral healthcare and counseling. In both Yolo and Yuba Counties, the proportion of their ADP with an active mental health case increased by about 35 percentage points from 2009 to 2019. In Los Angeles County, this rate increased by a full 12 percentage points over this same period. However, in Orange County this rate increased by only a total of 2 percentage points. The average county experienced a 15 percentage point increase in the segment of their jail population with an active mental health case between 2009 and 2019.

Psychotropic Medications

Similarly, counties have experienced markedly different degrees of total change in the estimated share of their jail population receiving psychotropic medications since 2009. In Santa Clara County, the share of their jail population receiving psychotropic medications increased by about 30 percentage points from 2009 to 2019. In Los Angeles County, this rate increased by 22 percentage points over this same period. However, in Butte County this rate fell by a total of 2 percentage points. The average county saw the percent of their jail population receiving psychotropic medications climb approximately 11 percentage points between 2009 and 2019.

¹³ See Appendix C for a discussion about the *annualized year-over-year change* in both the percent of county jail populations with either an active mental health case or a psychotropic medication.

Figure 4a. *Total Change in the Percent of the Jail Population with an Active Mental Health Case by County Between 2009 and 2019*

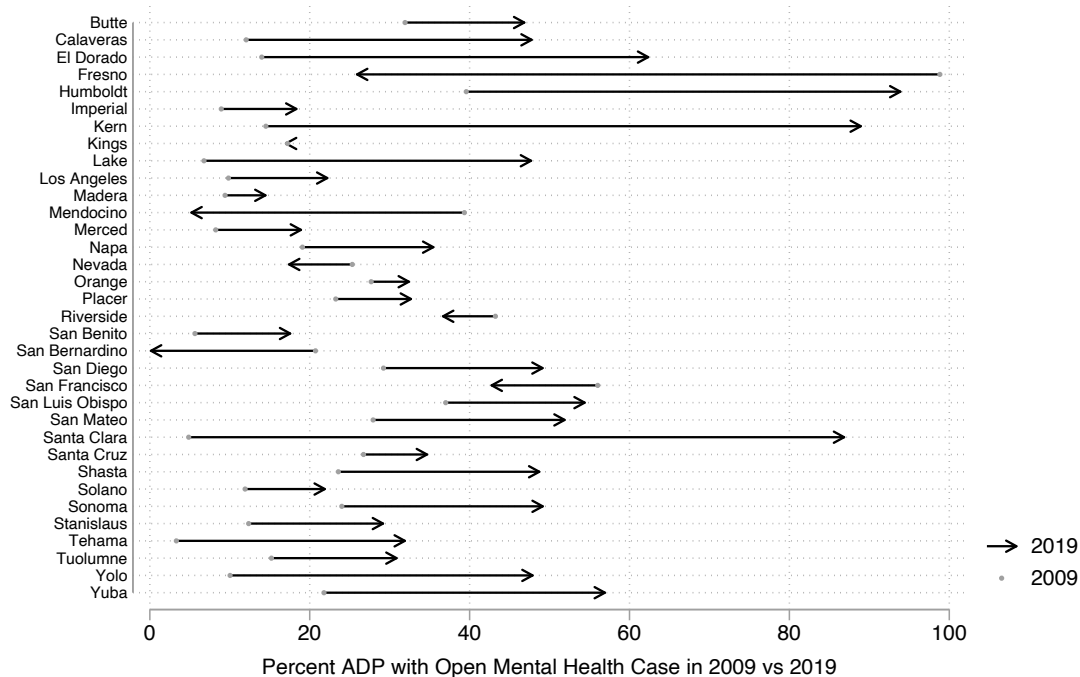
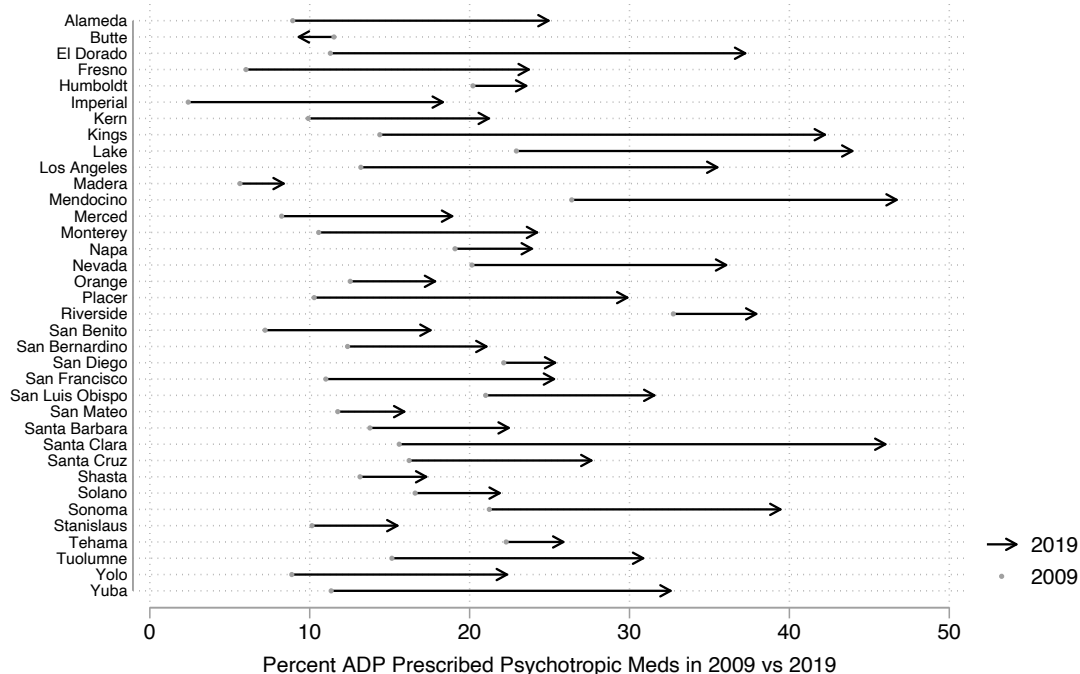


Figure 4b. *Total Change in the Percent of the Jail Population Receiving Psychotropic Medications by County Between 2009 and 2019*



Discussion

According to the BJS's national studies on this population, about a third (roughly 35 percent) of jail inmates who met the threshold for serious psychological distress (SPD) had received mental health treatment since admission to their current facility.¹⁴ In comparison, 38 percent of jail inmates who had ever been told that they had a mental disorder said they were currently receiving treatment for a mental health problem.¹⁵ An estimated 30 percent of jail inmates said they were currently taking prescription medication.¹⁶ In our study we rely upon the number of psychotropic medication prescriptions and open psychiatry cases to estimate the prevalence of mental illness. However, our estimates are likely biased downwards (i.e., our estimates are likely conservative), since national studies have shown that a significant share of the jail-incarcerated people battling mental illness do not receive treatment.

There are a few different explanations for why the share of the statewide jail population with either a prescription for psychotropic medications or an active mental health cases has increased since 2009:

- This finding could reflect a trend toward the increased incarceration of seriously mentally ill individuals. Local factors, such as increased homelessness or defendants increasingly found Incompetent to Stand Trial (IST), could potentially contribute to this trend. Alternatively, the consequences of state policy changes under Public Safety Realignment that have redirected inmates with lower level offenses to jail who previously had been sentenced to prison could be driving this trend. One policy objective of Realignment was to make it easier to connect inmates serving short sentences with community resources, such as behavioral health services and treatment, that would improve recidivism.
- The increase we observe in the rate of the incarcerated jail population with either an open case or an active psychotropic medication prescription might not be due to increased numbers of incarcerations of mentally ill individuals, but rather to better identification, diagnosis, and treatment of seriously mentally ill individuals in jails. Further research should focus on identifying the ways in which jails have changed their practices during this period.

Measuring the number of jail inmates receiving psychotropic medications or with an open case file could serve as a possible proxy for the number of individuals with mental illness in jail. However, the reliability of these figures depends on the consistency of mental health assessment, diagnostic, and treatment practices in all jails. A standard screening and assessment process could allow for a more precise accounting of the mentally ill population in California and allow for more efficient allocation of funds/resources.¹⁷ However, in the short term, the BSCC data provides a useful baseline to help understand local incarceration trends related to individuals with mental illness and can help inform policies that attempt to address this issue.

¹⁴ [BJS Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011-2012.](#)

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ The Council on Criminal Justice and Behavioral Health (CCJBH), formerly known as the Council of Mentally Ill Offenders (COMIO), and others have recommended the adoption of standardized screening and assessment tools at booking.

Recommendations for Improved Data Collection

Jails are facing a growing crisis as the proportion of incarcerated individuals with serious mental illness continues to rise. State and local policymakers are working to confront the problem, but the need for accurate data is critical. The available data from the BSCC about mental health in jails are incomplete. However, there are several things that can be done to improve our accounting of mental illness in jail:

1. Improve the uniformity of reporting.

The BSCC should take steps to improve the uniformity of reporting. The workbook that the BSCC distributes alongside the JPS could be made more detailed. For example, the BSCC does not provide a clear, concrete definition of what counts as a psychotropic medication. It is unclear what each jurisdiction uses as their definition for the purposes of reporting in this survey. Section 3500(c) of the California Penal Code defines a “psychotropic drug” as a drug that has the capability of changing or controlling mental functioning or behavior through direct pharmacological action.^{18,19} CalHPS was unable to verify the definitions used by the jails included in this analysis.

2. Increase the consistency of reporting.

Several counties inconsistently report information about the number of individuals receiving psychotropic medications and/or the number of open mental health cases. In terms of consistency, Marin, Sacramento, Riverside, and San Diego are counties that have relatively poor reporting history. Moreover, a number of counties not only inconsistently report answers to this part of the JPS survey, but they rarely report at all. San Joaquin, Lassen, Marin, and Tulare are counties that missed reporting for over 50 percent of all the JPS reporting periods between January 2002 and June 2019. Appendix B contains details about the missing data and demonstrates which counties report most and least consistently.

3. Enhance the accuracy of reporting.

The BSCC should work more closely with the reporting jurisdictions to obtain more accurate JPS responses. In our review of the JPS data we found several inaccuracies and errors in data reporting. For example, it should be always true that the highest one-day population is always greater than or equal to the number of open mental health cases on the last day of the month. However, this is not consistently the case in the data. There are some counties, during some reporting periods (i.e., months) that report a greater number of open mental health cases than the peak population for that month. For example, in October 2018 Humboldt reported that their highest single day population count was 412 inmates, but they reported having 481 open mental health cases on the last day of that same October. In fact, between 2009 and 2019 there were more than 30 other instances in the JPS data where the number of reported open mental health cases at month end was greater than the peak single-day population during that month.

¹⁸ California Penal Code Section 3500(c) [\[Link\]](#)

¹⁹ These drugs include, but are not limited to, antipsychotic, antianxiety, sedative, antidepressant, and stimulant drugs. Psychotropic drugs also include mind-altering and behavior altering drugs that, in specified dosages, are used to alleviate certain physical disorders, and drugs that may be ordinarily used to alleviate certain physical disorders.

About the Author

Konrad Franco is a Researcher with CalHPS. He is currently pursuing a PhD in Sociology with concentration in quantitative research methods at the University of California, Davis. He studies the physical and behavioral health of individuals cycling through jails, prisons, and immigration detention facilities. He can be reached at klfranco@ucdavis.edu.

About California Health Policy Strategies (CalHPS), L.L.C.

CalHPS is a mission driven health policy consulting group based in Sacramento. For more information, visit www.calhps.com.

Appendix A: State Sample Composition

For our statewide analysis of the JPS data we constructed samples on an annual basis, individually for each data point of interest – psychotropic medications and open mental health cases. We only included counties that provided at least two non-missing answers per year pertaining to the JPS questions regarding the (1) the month-end number of psychotropic medication prescriptions, (2) the month-end number of active mental health cases, and (3) the month-end jail population (i.e., ADP). In other words, we included a county if they responded to these particular questions of interest in the JPS at least twice in any given year.

The following two tables demonstrate which counties are included in our study and during which years. **A black check mark (✓) indicates that a given county reported for that period and is included in the statewide sample. Conversely a red highlighted cross mark (✗) indicates that a given county is excluded from the statewide sample because they did not sufficiently report during that period.**

Table 1. Sample Composition: Open Mental Health Cases

County	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Alameda	✓	✓	X	X	X	X	X	X	X	X	X
Amador	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Butte	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Calaveras	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Colusa	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Contra Costa	X	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Del Norte	✓	✓	✓	✓	✓	X	X	X	X	✓	✓
El Dorado	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Fresno	✓	✓	✓	X	✓	✓	✓	✓	✓	✓	✓
Glenn	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Humboldt	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Imperial	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Inyo	✓	✓	✓	X	X	X	X	✓	✓	✓	✓
Kern	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Kings	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Lake	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Lassen	X	X	X	X	X	X	✓	✓	✓	✓	✓
Los Angeles	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Madera	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Marin	X	X	X	X	X	✓	✓	✓	✓	✓	✓
Mariposa	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Mendocino	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Merced	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Modoc	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Mono	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Monterey	X	X	X	X	X	X	X	X	X	X	X
Napa	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Nevada	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Orange	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Placer	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Plumas	✓	✓	✓	✓	X	X	X	X	X	✓	✓
Riverside	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Sacramento	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	X
San Benito	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
San Bernardino	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
San Diego	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
San Francisco	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
San Joaquin	X	X	X	X	X	X	X	X	X	X	X
San Luis Obispo	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
San Mateo	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Santa Barbara	✓	✓	✓	✓	✓	✓	✓	✓	✓	X	X
Santa Clara	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Santa Cruz	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Shasta	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Siskiyou	✓	X	X	X	X	✓	✓	✓	✓	✓	✓
Solano	✓	X	✓	✓	✓	✓	✓	✓	✓	✓	✓
Sonoma	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Stanislaus	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Sutter	✓	✓	✓	✓	X	X	X	X	X	X	X
Tehama	✓	✓	✓	X	✓	✓	✓	✓	✓	✓	✓
Trinity	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Tulare	X	X	X	X	✓	✓	✓	✓	✓	✓	✓
Tuolumne	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Ventura	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	X
Yolo	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Yuba	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

The black check mark (✓) indicates that a given county is included in the statewide sample.

The red highlighted cross mark (X) indicates that a given county is excluded from the statewide sample.

Included counties reported both the month-end number of active mental health cases *and* their month-end ADP at least twice in any given year.

Table 2. Sample Composition: Psychotropic Medications

County	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Alameda	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Amador	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Butte	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Calaveras	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Colusa	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Contra Costa	X	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Del Norte	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
El Dorado	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Fresno	✓	✓	✓	X	✓	✓	✓	✓	✓	✓	✓
Glenn	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Humboldt	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Imperial	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Inyo	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Kern	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Kings	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Lake	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Lassen	X	X	X	X	X	X	✓	✓	✓	✓	✓
Los Angeles	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Madera	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Marin	X	X	X	X	X	X	X	X	X	✓	✓
Mariposa	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Mendocino	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Merced	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Modoc	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Mono	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Monterey	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Napa	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Nevada	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Orange	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Placer	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Plumas	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Riverside	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Sacramento	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	X
San Benito	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
San Bernardino	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
San Diego	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
San Francisco	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
San Joaquin	X	X	X	X	X	X	X	X	X	X	X
San Luis Obispo	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
San Mateo	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Santa Barbara	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Santa Clara	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Santa Cruz	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Shasta	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Siskiyou	✓	X	X	X	X	✓	✓	✓	✓	✓	✓
Solano	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Sonoma	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Stanislaus	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Sutter	✓	✓	✓	✓	X	X	X	X	X	X	X
Tehama	✓	✓	✓	X	✓	✓	✓	✓	✓	✓	✓
Trinity	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Tulare	X	X	X	X	✓	✓	✓	✓	✓	✓	✓
Tuolumne	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Ventura	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	X
Yolo	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Yuba	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

The black check mark (✓) indicates that a given county is included in the statewide sample.

The red highlighted cross mark (X) indicates that a given county is excluded from the statewide sample.

Included counties reported both the month-end number of individuals receiving psychotropic medications and their month-end ADP at least twice in any given year.

Appendix B: Measures of Change for Individual Counties

Total percent change is a measure of “long-run” change. This metric can also be called the cumulative percent change.

$$\text{Total Percent Change} = \frac{2019 \text{ value} - 2009 \text{ value}}{2009 \text{ value}}$$

Annual percent change is a measure of “short-run” year-over-year change.

$$\text{Annual Percent Change} = \frac{\text{value}_k - \text{value}_{k-1}}{\text{value}_{k-1}}$$

value_k = value in any given year (year k)
 value_{k-1} = value in previous year (year k-1)

Average annual percent change is a measure of the average “year-over-year” change. This is a linear measure that is the arithmetic mean of all the observed annual percent changes over the time period.

$$\text{Average Annual Percent Change} = \frac{\text{Change}_{2009-2010} + \text{Change}_{2010-2011} + \dots + \text{Change}_{2018-2019}}{11}$$

$\text{Change}_{2009-2010}$ = percent change between 2009 and 2010
 $\text{Change}_{2010-2011}$ = percent change between 2010 and 2011

Annualized percent change (i.e., compound annual percent change) is a “smooth” measure of the average observed annual percent change. This metric is the geometric mean of all the observed annual percent changes. The annualized percent change is useful for comparing change between different counties. The annualized percent change offers a single measure of change for the entire period which, had it applied at all times throughout that period, would have led to the same total change as was observed. Over long periods of time, the compound annual percent change is a generally acceptable and preferred metric for average change. The most important limitation of this metric is that because it calculates a smoothed rate of change over a period, it ignores volatility and implies that the change during that time was steady.

$$\text{Annualized Percent Change} = \frac{2019 \text{ value}^{\frac{1}{11}}}{2009 \text{ value}} - 1$$

Appendix C: Annualized Year-Over-Year Change for Individual Counties

The majority of counties in California experienced increases in the prevalence of mental illness in their jails year-over-year. However, the annualized year-over-year change in the relative prevalence of mental illness among jail-incarcerated people was also significantly different across counties.

Open Mental Health Cases

Between 2009 and 2019, counties experienced markedly different degrees of annualized year-over-year change in the proportion of their jail population with active mental health cases. The median average year-over-year change in rate of mental health case prevalence in California jails was roughly 8 percent, but across the state, annualized rates of changes ranged from 36 percent increases to 29 percent decreases. In Yolo County, the share of the jail population with an active mental health case increased by roughly 15 percent per year, on average. Los Angeles County experienced an average change in this metric of about 8 percent year-over-year. Some counties, such as Orange experienced a small change of about 1 percent per year on average over this time period.

Psychotropic Medications

Between 2009 and 2019, counties also experienced markedly different degrees of annualized year-over-year change in the share of their jail population receiving psychotropic medications. The median annualized change in rate of psychotropic medication prevalence in California jails was roughly 6 percent, but across the state, annualized rates of changes ranged from 9 percent increases to 23 percent decreases. In Fresno and Kern County, the number of people receiving psychotropic medications increased by about 10 to 13 percent per year, on average. Los Angeles County experienced an average change of about 9 percent year-over-year. Some counties, such as Humboldt and Napa experienced small change of less than 1 percent per year on average over this time period.

Attachment A
to Submission of sujatha baliga



Restorative Community Conferencing

A study of Community Works West's restorative justice youth diversion program in Alameda County

sujatha baliga
Sia Henry
Georgia Valentine

IMPACT JUSTICE
A national innovation and research center

communityworks
JUSTICE DEMANDS HUMANITY

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EXECUTIVE SUMMARY

This report, written by Impact Justice’s Restorative Justice Project, explores Community Works West’s Restorative Community Conferencing program, which currently diverts over 100 youth per year away from the juvenile legal system. Restorative Community Conferencing (RCC) is a process for resolving harm through an organized, facilitated dialogue in which young people, with the support of family and community members, meet with their crime victims to create a plan to repair the harm caused by their offense.

Community Works West has been operating the RCC program in Alameda County, California for more than six years through positive relationships with community and criminal legal system stakeholders. This report describes the program’s benefits and effectiveness based on an analysis of available data from January 2012 through December 2014. Notable findings reveal that, of 102 young people who completed the RCC program, after 12 months only 18.4% of the RCC youth were subsequently adjudicated delinquent—that is, determined by the court to have committed another delinquent act—compared to 32.1% of the control group of youth whose cases were processed through the traditional juvenile legal system. Over time, recidivism rates for RCC youth generally held, rising only slightly, while the recidivism rates of the control group youth increased significantly over time. Ninety-one percent of participating victims reported that they would participate in another RCC. The report also describes how the RCC program carries significant cost-saving potential, due to the lower rates of reoffending from using RCC, combined with the RCC intervention’s average one-time cost of \$4,500, versus \$23,000 per year on average for a youth on probation.

Community Works West

110 Broadway
Oakland, CA 94607
www.CommunityWorksWest.org

Impact Justice

2633 Telegraph Ave, Suite 104
Oakland, CA 94612
www.ImpactJustice.org

RESTORATIVE JUSTICE

Over the last several decades the United States has amassed the largest prison population in the world within a criminal legal system teeming with racial and ethnic disparities.¹ This reality persists despite falling crime rates and evidence that people of color do not commit more crime than white people.² Crime victims have also expressed disappointment with legal system outcomes as many have found that even when convictions are secured, their needs remain unmet.³ As a result of the current system's failures, restorative justice has grown in popularity as a viable alternative, capable of reducing recidivism and incarceration, decreasing spending on public safety, increasing community involvement, and improving victim satisfaction.

Our criminal legal system operates by asking three guiding questions:

- (1) *What law was broken?*
- (2) *Who broke it?*
- (3) *What punishment is warranted?*

In contrast, restorative justice invites a fundamental shift in the way we think about and address crime by asking:

- (1) *Who was harmed?*
- (2) *What do they need?*
- (3) *Whose obligation is it to meet those needs?*⁴

Thus, restorative justice differs from the adversarial legal process as the latter focuses on the actions of the person who caused harm,⁵ while the former prioritizes the people and relationships harmed.

When an offense occurs, legal proceedings can often be intensive, traumatic, and time-consuming for the responsible party, the person harmed, and their families and community members. By contrast, restorative practices encourage constructive responses to wrongdoing by bringing those who have harmed, their victims, and affected communities into processes that repair the harm and rebuild relationships. At its best, through face-to-face dialogue, this

¹ US Department of Justice. (2013). *Smart on crime: Reforming the criminal justice system for the 21st century*. Attorney General Eric Holder's remarks to American Bar Association's Annual Convention in San Francisco, CA. Retrieved from <http://www.justice.gov/sites/default/files/ag/legacy/2013/08/12/smart-on-crime.pdf>

² National Research Council (2014). *The Growth of Incarceration in the United States: Exploring Causes and Consequences*. Washington, DC: The National Academies Press. Available at: http://www.nap.edu/openbook.php?record_id=18613 (pp. 47–56); Mariscal, Raquel, and James Bell (2011). "Race, Ethnicity and Ancestry in Juvenile Justice," in F. Sherman & F. Jacobs (Eds.), *Juvenile Justice: Advancing Research, Policy, and Practice* (pp.111-130). Hoboken, NJ: John Wiley and Sons.

³ See, generally, Herman, S. (2010). *Parallel Justice for Victims of Crime*. Washington, DC: National Center for Victims of Crime. Californians for Safety and Justice (2013). *California Crime Victims' Voices: Findings from the First-Ever Survey of California Crime Victims and Survivors*. Retrieved from http://libcloud.s3.amazonaws.com/211/72/d/228/2/VictimsReport_07_16_13.pdf

⁴ Zehr, H. (2002). *Little Book of Restorative Justice*. New York, NY: Good Books.

⁵ The Restorative Justice Project believes terms such as "offender," "perpetrator," and "criminal" ignore the ever changing and complex nature of one's interpersonal and social identity and, instead, label individuals in such a way that defines them by their previous behaviors and experiences rather than as human beings capable of growth and change. Moreover, the language we use to define an individual often affects how society views, values, and treats that person—often creating society-fulfilling prophecies. Thus, this report avoids the use of negative labels and, alternatively, refers to the "person who harmed," "responsible youth, or "responsible party" interchangeably to refer to an individual who has committed a crime or caused harm.

approach results in consensus-based plans that meet victim-identified needs in the wake of a crime.

In applications with young people, restorative justice can prevent both contact with the juvenile legal system and school expulsions and suspensions. Several restorative justice models have been shown to reduce recidivism and, when embraced as a larger-scale solution to wrongdoing, can minimize the social and fiscal costs of crime. Introduced in US cities such as Louisville, Kentucky, and Baltimore, Maryland, and in larger international contexts, restorative programs have proven immensely effective. For instance, this approach has rendered youth incarceration nearly obsolete in New Zealand, as detailed at right.

RESTORATIVE COMMUNITY CONFERENCING (RCC)

The principles of restorative justice have led to the creation of a number of programs designed to address and resolve conflicts in different contexts. Examples of such programs include victim-offender dialogues, circles of support and accountability, and peacemaking circles. An array of restorative models has been introduced at every stage of the legal process, from pre-arrest to reentry. While restorative justice can take on a number of forms, perhaps the most prominent is the Restorative Community Conferencing (RCC) approach, which, according to a 2007 international meta-analysis, is effective at reducing

FROM NEW ZEALAND TO OAKLAND, CA

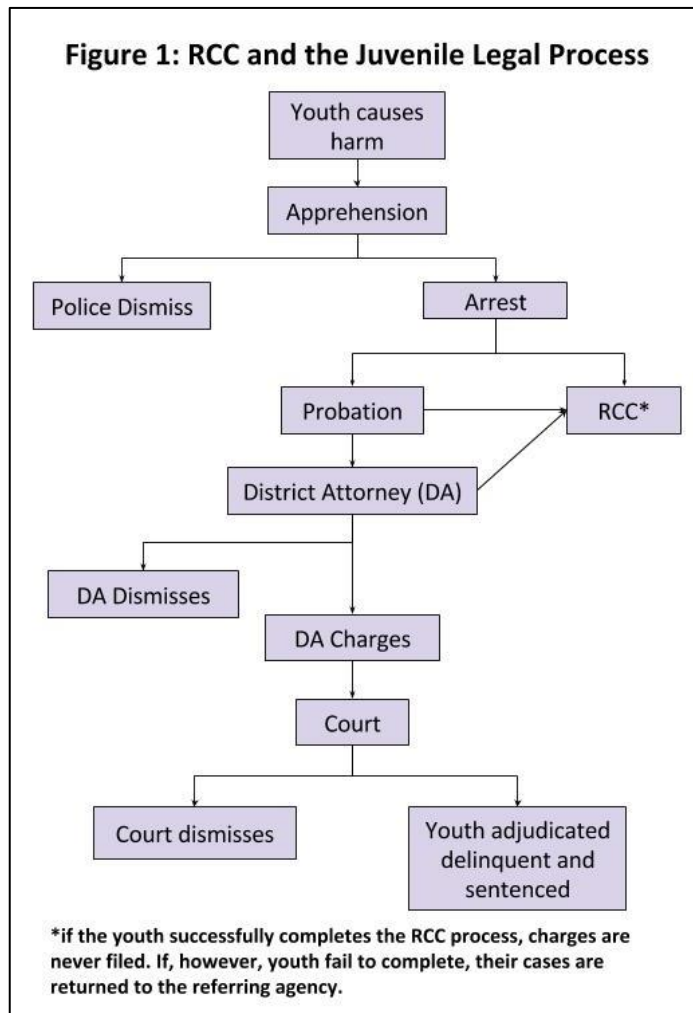
In 1988, New Zealand's government commissioned a report identifying government practices that resulted in institutionalized racism.⁶ This was evidenced by the "higher risks Māori children and young offenders faced compared to non-Māori. The report confirmed that Māori [were] over-represented in negative statistics relating to health, education, housing and unemployment, and concluded that this [was] the result of a 'monocultural bias' which favor[ed] non-Māori culture."⁷ In response, New Zealand passed the Children, Young Persons, and Their Families Act of 1989, transforming the nation's juvenile justice system, which now relies almost exclusively on Family Group Conferencing (FGC) to address youthful offending. FGC is a form of restorative justice whereby a young person who has offended, their family, victims, and others (e.g., the police, a social worker, youth advocate, etc.) talk about how to help the young person own up to what he did wrong and learn from his mistakes.⁸ During the FGC, participants agree on a plan through which the youth can make up for her offense and turn her life around. The plan becomes legally binding, and the Department of Child, Youth and Family Services monitors the young person to ensure it is completed. New Zealand has found that FGCs reduce recidivism, increase victim satisfaction, and promote a sense of responsibility in offenders. Following in New Zealand's footsteps, Oakland, California, now has a restorative justice program modeled after the FGC approach, called Restorative Community Conferencing.

⁶ Bolitho, J., Bruce, J., & Mason, G. (2012). *Restorative justice: Adults and Emerging Practice*. Annadale, New South Wales: Federation Press.

⁷ Id.

⁸ Id.

recidivism, among other significant benefits.⁹ Modeled after the New Zealand Family Group Conferencing (FGC) model, RCCs involve an organized, facilitated dialogue in which young people, with the support of family, community, and law enforcement, meet with their crime victims to create a plan to repair the harm done. It is most effective with serious crimes in which there is an identifiable victim, such as in the case of robbery, burglary, car theft, assault/battery, arson, and teen relationship violence.



There is power in the simplicity of the RCC process. When police or school authorities apprehend a young person for committing a crime, rather than sending the case through traditional juvenile legal processes, the referring agency (school, police, probation, or district attorney) contacts a nonprofit or community based organization trained in the RCC approach. The organization reviews the file and, if they accept the case, the referring agency places the case in a holding pattern, neither dropping nor charging it. Next, the facilitating organization sends out letters and program brochures to the accused youth and their parents or guardians. The letters are followed by a phone call and a home visit by an RCC facilitator to answer questions and invite participation in the program. If the young person accepts responsibility and agrees to participate, letters and brochures are sent to the victim, again followed by phone calls and visits. No fewer than two meetings are held with both parties to determine amenability

and safety and to allow youth and their victims to independently assess the harms, needs, and obligations resulting from the crime.

Ideally, RCC programs include a formal agreement, often in the form of a Memorandum of Understanding (MOU), with the district attorney stating that all communications made in the RCC, in preparation for the RCC, and in the completion stage are confidential and cannot be used against participants outside the RCC process. This encourages complete honesty about the crime and its causes and effects. It also encourages the participation of some victims who

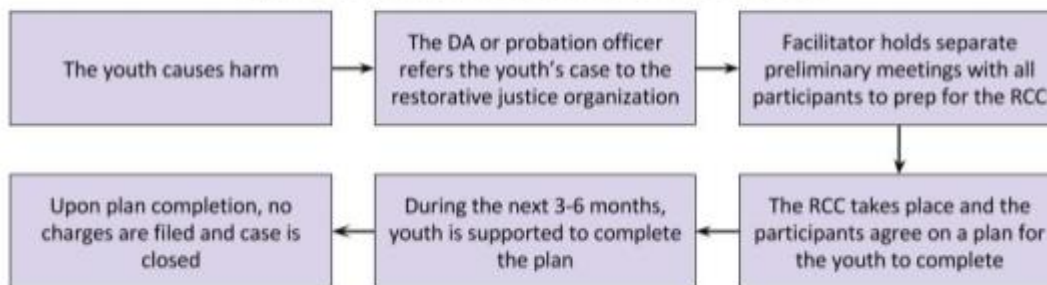
⁹ Sherman, L., & Strang, H. (2007). *Restorative Justice: The Evidence*. The Smith Institute, London, UK. Retrieved from http://www.iirp.edu/pdf/RJ_full_report.pdf

would like to hold the youth accountable but are unwilling to engage directly with legal systems.

Within a few weeks following preliminary meetings, the RCC takes place at a neutral location, such as the nonprofit organization's office, a community center, or public library meeting room. Through the conference, the young person, their victim,¹⁰ supporters of both, and community members come together to discuss the crime and its causes and effects. In each RCC, all parties engage in self-reflection, firm yet supportive accountability, and apologies, all culminating in a commitment to help a young person overcome obstacles and mend social ties. During the RCC, participants produce a consensus-based plan for the young person to repair the harm done. The plan typically includes four objectives: to "do right" by one's victim, family, community, and self. If the RCC participants are unable to come to agreement on the plan or the youth fails to complete the plan, the case is returned to the referring agency (e.g., police, probation, or the court).

The RCC facilitator monitors the plan during the completion stage. An RCC agreements/case manager may also verify and assist with plan completion and coordinate services needed beyond the scope of the RCC. The program director receives the cases from the district attorney or other referring agency and provides monthly status reports to them. The plan is generally completed within three to six months, at which point the case is closed without charges ever being filed.

Figure 2: Breakdown of a Successful RCC Process



EVIDENCE BASE FOR RESTORATIVE JUSTICE

The available research conducted both within the United States and internationally has found restorative justice is effective at reducing recidivism rates while improving victim satisfaction compared with traditional, adversarial court processes. For instance, a systematic review of programs in the United States, Australia, and the United Kingdom found restorative models decrease the risk of reoffending, especially for violent crimes.¹¹ The researchers found restorative processes also benefit victims in a number of ways, including reducing post-

¹⁰ Occasionally, if the victim declines to participate directly, he or she may choose a surrogate victim.

¹¹ Strang, H., Sherman, L., W., Mayo-Wilson, E., Woods, D., & Ariel, B. (2013). "Restorative justice conferencing (RJC) using face-to-face meetings of offenders and victims: Effects on offender recidivism and victim satisfaction. A systematic review." In *Campbell Systematic Review*, 9(12), 1–59. See also Sherman, L., & Strang, H. (2007). *Restorative justice: The Evidence*. Retrieved from http://www.iirp.edu/pdf/RJ_full_report.pdf

traumatic stress symptoms, increasing satisfaction with the resolution of their case, and lessening the desire for violent revenge. Finally, the review determined that restorative justice was more economical than conventional legal systems as it not only prevents crime but also costs less to administer.¹²

RCC IN ALAMEDA COUNTY

RCC has been operating in Alameda County, California for more than 9 years through positive relationships with community and criminal justice system stakeholders. RCC's application in Alameda County is the first of its kind and scope to address youth crimes in a major US urban area in a solely pre-charge posture with an explicit goal of reducing racial and ethnic disparities in diversion and incarceration while producing reliable, quantitative data. In 2008, institutional support to launch this program

was garnered from all necessary partners (the Alameda County Juvenile Court; Oakland's chief of police and several other police departments; the County's public defender, district attorney, and probation departments; victim- and youth-serving organizations; and other community-based

COMMUNITY WORKS "MAKING IT RIGHT" IN SAN FRANCISCO

In addition to its RCC program in Alameda County, funding from The Zellerbach Family Foundation has made it possible for Community Works to launch a similar RCC program in San Francisco called "Make it Right." While still in its pilot phase, the Make it Right program is currently serving 25 youth each year. To learn more about Make it Right, see the note at the end of this report.

organizations). Initial operationalizing of the program proved promising: harms were repaired, youth made amends, and persons harmed felt heard and vindicated. The Oakland-based organization Community Works West (Community Works) ultimately took on the task of running the RCC program, providing conference facilitators and handling case referrals. In 2012, the US Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJJDP) awarded Community Works a three year Title II Formula Grant¹³ in the amount of 1.1 million dollars to divert up to 95 youth per year away from the juvenile legal system using Restorative Community Conferencing.

Community Works has demonstrated its ability to successfully and reliably implement RCCs as a pre-adjudication diversion program for youth. Through years of trust building, Community Works now receives RCC cases from agencies across Alameda County, including schools, the probation department, multiple police departments, and the managing district attorney who heads the County's Juvenile Division.

A growing number of stakeholders within Alameda County's criminal legal system have had an opportunity to learn about and gain skills in restorative practices. For example, in 2014, the Restorative Justice Project and Community Works, in conjunction with other community-based organizations, collaborated to facilitate a two-day restorative justice training for the Oakland Police Department (OPD).

¹² Ibid.

¹³ In Fall 2015, Community Works was awarded a new four-year Title II grant.

RCC ELIGIBILITY CRITERIA

Eligibility criteria for enrollment in a restorative justice process vary among programs. Some counties target crimes that young people of color are most often incarcerated for, such as robbery, larceny, and assault, whereas others make eligible any crime punishable by a period of confinement. Ultimately, the eligibility criteria for a particular program will depend on the agreement between the applicable jurisdiction's district attorney and probation offices and the organization carrying out the restorative process.

Community Works operates RCC as a pre-charge model (i.e., youth are referred to the program before a prosecutor files criminal charges). This approach allows for the individual accused of a crime and the respective victims and community members to reap the benefits of the restorative process without having to suffer from the debilitating and collateral consequences associated with judicial system involvement. Moreover, a pre-charge restorative program allows the County to keep costs as low as possible by avoiding the use of court time, probation time, and other resources.

In Alameda County, the district attorney has complete discretion to determine which cases to refer to Community Works' RCC process.¹⁴ Community Works then focuses on accepting cases involving serious crimes in which there is an identifiable victim (e.g., robbery, burglary, car theft, assault/battery, arson, and teen dating violence) and the responsible youth would otherwise be exposed to significant contact with the juvenile legal system.

YOUTH CRIME IN ALAMEDA COUNTY

Using data from the Alameda County Probation Department's July 2013 report and the results of a recidivism analysis for Alameda youth on probation in 2010,¹⁵ we can provide some background on youth crime in Alameda County.

In July 2013, 2,147 young people (348 females and 1,799 males) were on probation in Alameda County.¹⁶ Of those probationers, 57.7% were Black, 27% were Latinx,¹⁷ and 8.5% were White. The average time spent on probation was 12 months for females and 18 months for males. The average time Black youth spent on probation was 20 months, with Latinx youth spending 14

¹⁴ Ideally, diversion programs should minimize discretion in the decision to refer a particular case in order to reduce the risk of racial and ethnic disparities and streamline the referral process. One way to minimize or eliminate discretion is for the referring agency to determine which offenses are eligible for the restorative diversion program and to refer all individuals who commit those qualifying crimes to the restorative process. The parallel San Francisco "Make it Right" RCC program employs this preferred method.

¹⁵ Dr. Isami Arifuku, previously a Senior Researcher within the National Council on Crime and Delinquency's Oakland office, conducted this analysis.

¹⁶ Alameda County Probation Department (2013). *A look into probation: Monthly report—July 2013*. Retrieved from <http://www.acgov.org/probation/documents/July2013Report.pdf>

¹⁷ Latinx is a term used in this report to be gender inclusive of those who identify as Latino, Latina, Latin@, and those who identify as non-binary.

months; and White youth, 10 months.¹⁸ The majority of youth were placed on probation for property offenses (28.0%), person offenses (26.0%), or failing to obey a court order (26.0%).

OUTCOMES FOR ALAMEDA COUNTY RCC YOUTH

To measure RCC's impact, the Restorative Justice Project collaborated with Dr. Isami Arifuku, formerly a Senior Researcher at the National Council on Crime and Delinquency. For the analysis, RCC youth were matched with a control group of youth adjudicated through the Alameda County judicial process based on race, gender, age, offense (both in terms of felony/misdemeanor and in terms of person/property/drug/other), and priors. When possible, matches were made using all categories and resulted in two groups with very similar demographics profiles. For example, the RCC had 45% Black youth and 33% Latinx youth while the control group had 40% Black youth and 30% Latinx youth. Similarly, 62% of the RCC had felony charges and 74% had no prior offenses; the control group had 60% with felony and 66% with no prior offenses. Data on new offense(s), probation violations, petitions filed and sustained, and dispositions for all youth in the two cohorts are compared in the analysis. The matching process enables the Restorative Justice Project to compare youth who enrolled in RCC with youth who were processed through the court process and had similar characteristics to examine their different trajectories.

Recidivism Definition and Rates

The term "recidivism" generally refers to the likelihood that a person will commit a new crime after being found guilty of a crime previously. In the juvenile legal system this can be measured by whether a young person is arrested again. However, not all arrests result in sustained charges. Therefore, this study specifies recidivism to refer to the likelihood that a young person will be arrested and subsequently adjudicated delinquent (i.e. found guilty by a judge).¹⁹ Given that Black and Latinx youth are arrested at disproportionately higher rates than White youth,²⁰ defining recidivism in this way provides a more accurate understanding of whether youth are being adjudicated delinquent. The primary inquiry is whether the RCC youth were arrested and subsequently adjudicated delinquent for new offenses at lower, higher, or the same rates as a control group of youth who were processed through juvenile legal system. If a difference is generated, a second consideration is whether the difference between the RCC youth and the court-adjudicated youth is statistically significant.²¹

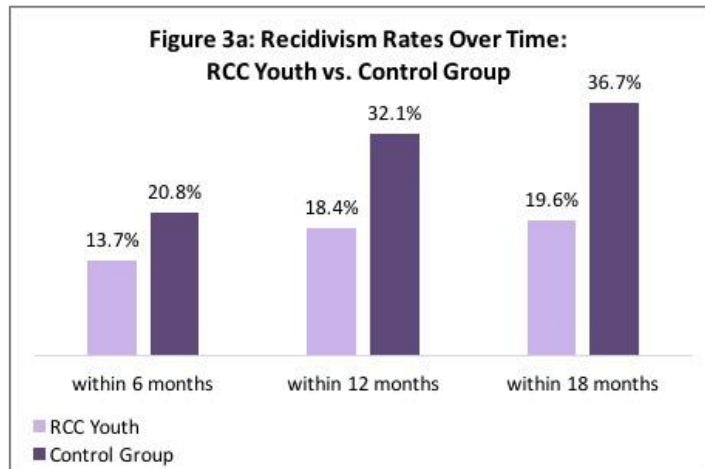
¹⁸ Since the probation department calculates average length of stay by those cases that closed during the month, it is expected that these numbers are actually higher.

¹⁹ The terms "subsequently adjudicated delinquent" and "charges sustained" are used interchangeably in this report. In the adult criminal court context these two terms are equivalent to being "found guilty" or "convicted of a crime."
<http://www.alameda.courts.ca.gov/Pages.aspx/Delinquency-Process-Proceedings>

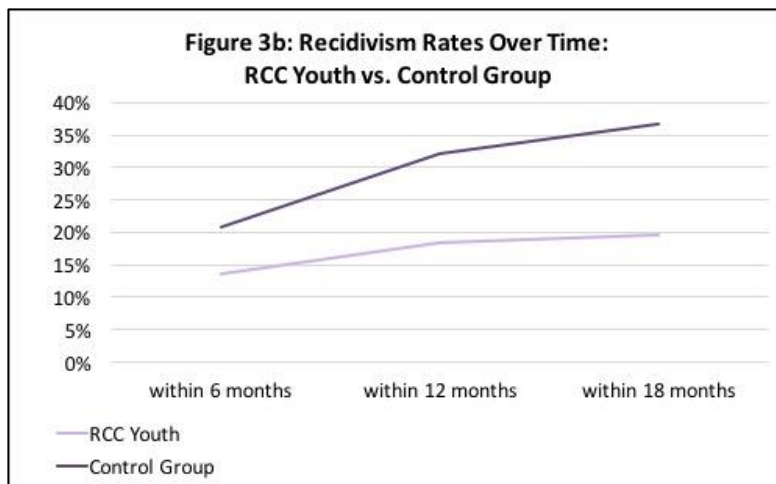
²⁰ Mariscal, Raquel, and James Bell. 2011. "Race, Ethnicity and Ancestry in Juvenile Justice." In *Juvenile Justice: Advancing Research, Policy, and Practice*, edited by Francine Sherman and Francine Jacobs, 111-130. Hoboken, NJ: John Wiley and Sons.

²¹ A result or finding is considered "statistically significant" if it is likely attributable to a specific cause as opposed to a random occurrence. Statistical significance, evidenced by the p-value, can be strong or weak. The p-value represents the probability of error involved in accepting the observed result as valid, that is, as "representative of the population." As p-values typically range

The Community Works RCC program has made improvements in Alameda County similar to other restorative programs demonstrating evidence-based success. Between January 2012 and December 2014, 102 youth completed Community Works' RCC program. Figure 3a shows that of those youth, only 13.7% were subsequently adjudicated delinquent within 6 months of completing the program, 18.4% within 12 months, and 19.6% within 18 months. Such low recidivism rates stand in stark contrast with the County's youth subsequent adjudication rate of 20.8% within 6 months, 32.1% within 12 months, and 36.7% within 18 months. This difference is statistically significant ($p = 0.05$).



In other words, within 12 months of completing the RCC program, youth were 44% less likely to get a new sustained charge than youth who were processed through the juvenile legal system.



Another noteworthy finding is how much the gap grows between recidivism rates of the RCC youth compared to the control group over time, as shown above in Figure 3b. The recidivism rate for the RCC youth held and remained significantly lower. From 6 to 12 to 18 months, the RCC youth recidivism rates increase only slightly while the recidivism rates for the control group increase at a much

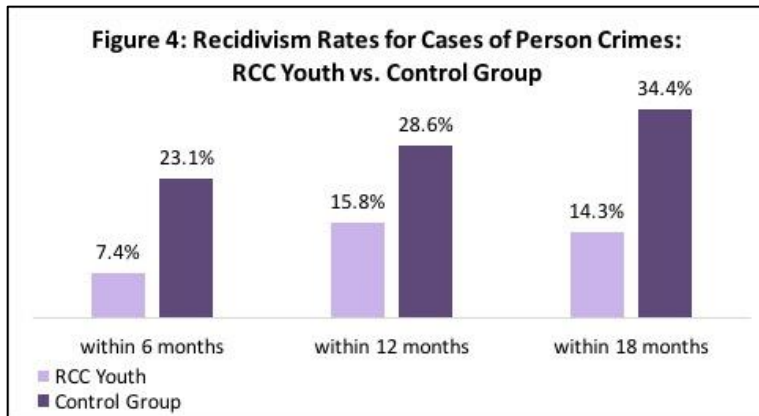
higher rate. This speaks to the effectiveness of the RCC program at sustained recidivism reduction over time.

Case Type and Seriousness of Cases Referred to Alameda RCC Program

With Community Works prioritizing serious offenses, 62% of the conferences to date have involved felony crimes. The most common serious crimes this program has accepted include robberies, burglaries, vehicle thefts, batteries, batteries causing great bodily injury, possession

from .01 to .05, the higher the p-value, the greater the likelihood of error and, thus, the less reliable the observed relationship is between the selected variables.

of marijuana for sale, and felony theft. Community Works has also handled a smaller number of assaults, assaults with a deadly weapon, sexual batteries, arsons, and crimes involving the exhibition of a deadly weapon besides a firearm.



Notably, recidivism rates for RCC youth whose cases involved person crimes were much lower than recidivism rates of youth with the same type of cases who were processed through the juvenile legal system. Within 12 months of completing the RCC program, youth whose cases originally involved person crimes were 48% less likely to recidivate. This data

supports the indication that RCCs are most successful in reducing recidivism with cases involving charges that are more personal and with a direct victim. Even when examining recidivism rates within the RCC participant group, the rates are consistently lower for cases involving person crimes (shown above in Figure 5) compared to cases involving property crimes. The recidivism rates for property crimes at 6, 12, and 18 months were 18.8%, 21.1%, and 21.4% respectively.

With respect to less serious offenses, the program has worked with cases involving vandalism, fighting in class / school assaults, hate crimes²², and thefts of purses and credit cards.

Demographics of RCC Participants

Of the RCC Participants in this study, 45% Black and 33% were Latinx. This is consistent with the program's explicit goal of reducing racial and ethnic disparities in the County's juvenile legal system.

A majority of the RCC youth as well as the control group of young people whose cases were processed through the juvenile legal system resided in Oakland, CA at the time this study took place.

Race: Recidivism rates of Black and Latinx youth who went through the RCC program were lower at 6, 12, and 18 months from program completion compared to the control group. This difference was greatest among male-identified Latinx youth. After 12 months, RCC Latino youth had a recidivism rate of 17.8% while court adjudicated Latino youth had a recidivism rate of 39.4%. Recidivism rates for White youth in the RCC program are not available because the sample group was too small and therefore would not generate statistically significant numbers.

The appendix of this report shows the full data tables for recidivism rates of RCC and court adjudicated youth at 6, 12, and 18 months. It also includes the re-arrest rates for those groups.

²² These hate crimes are being categorized as "less serious" offenses because they involve property damage, vandalism, or graffiti. No intention was made to devalue the impact of the impact of these crimes on survivors.

Gender:²³ As Figure 5 indicates, at 12 months out, boys whose cases were processed through the juvenile legal system were significantly more likely to have new charges sustained against them than RCC boys, RCC girls, and court adjudicated girls.

Victim Satisfaction

Following the RCC, facilitators asked participants to complete a survey to evaluate the process and its outcomes, and 35 victim participants responded to these assessments. **Ninety-one percent of victim participants who completed the survey reported that they would participate in another conference, and an equal number (91%) stated that they would recommend the process to a friend.**

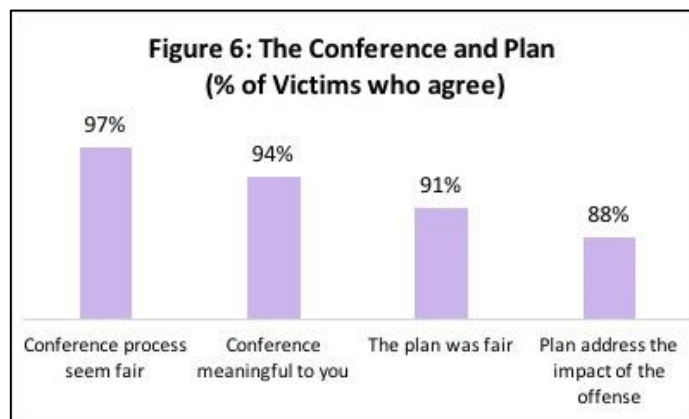
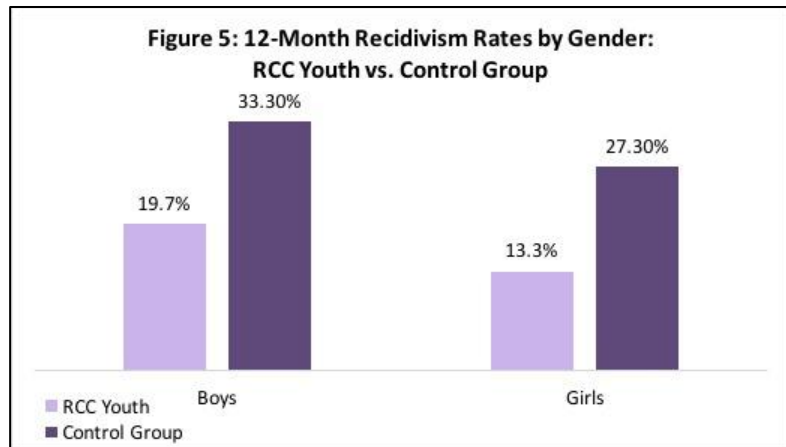
When asked what part of the RCC process was most meaningful to them, victims highlighted their ability to have contact with the responsible youth and their ability to sympathize with and understand the young person's actions.

I could put a face with the person who tried to break in and hear the motivation behind the actions.

Victim respondents also appreciated the ability to get answers to questions not previously answered and to see the youth who have harmed them demonstrate remorse for their actions.

It provided more details about the incident and the process of steps taken to correct the wrong.

Many also found it rewarding to hear the young person apologize and explain how they felt. Most victims indicated high satisfaction with the RCC program and 88% felt that the plan created through the conference addressed the impact of the offense, shown in Figure 6.²⁴



²³ When information about RCC Participants and members of the control group was originally collected, gender identity was collected using Community Works' enrollment form in which male or female were the only options. The current Community Works enrollment form includes multiple gender identity descriptors for participants to self-identify.

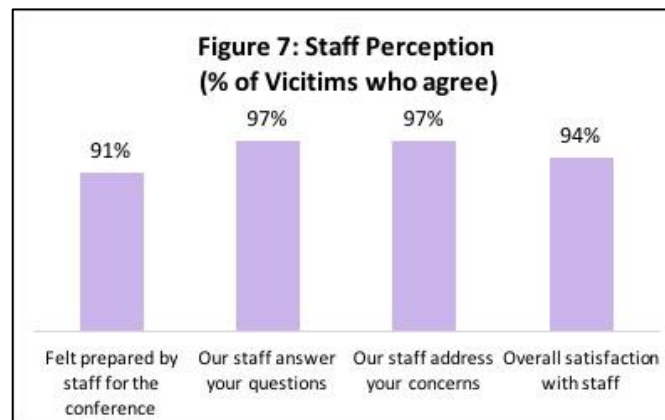
²⁴ This report did not track payments of restitution by the control group such that a comparative analysis could be completed. Restitution payment rates as ordered by courts are generally known to be low. See generally <https://victimsofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/restitution-collect>

Additionally, victims found it meaningful to convey to the youth the severity of their actions. Developing the plan for resolution was also very meaningful for victims.

I liked the fact that we were able to come up with a plan to help.

I think the important part was when the youth said he was going to anger management.

Victims also had generally very high perceptions of the RCC program staff as shown in Figure 7.



Victim Satisfaction Survey Collection: As previously stated, of the 102 RCC cases, 35 post-conference victim satisfaction surveys were collected. In 11 additional RCC cases, surrogates were used in place of the actual victims. Surrogates are individuals who have experienced the same harm as the actual victim and who have agreed to be present in the conference in place of the actual victims.

The post-conference satisfaction surveys are given immediately after the conference, and response rate can be challenging. This is because sometimes victims are content to have shared their story at the beginning of the conferencing process and do not feel the need to be present or part of the subsequent plan development process. In that situation, the victim may leave the conferencing process before the post-conference satisfaction surveys have been circulated. The conference facilitator later contacts the victim by phone after the plan has been developed to get their approval of the plan.

In the remaining 56 cases for which there were no post-conference victim satisfaction surveys collected, some victims may have left the conference under the circumstances described above or no actual victims or surrogates may have been present in the conference. In the latter scenario, community members who experienced harm were present.

This stands in contrast to programs such as Common Justice,²⁵ in which 100% of conferences involve actual victims and, of the cases that are eligible for restorative conferencing, 90% of actual victims contacted agree to participate. The low victim participation rates in Alameda

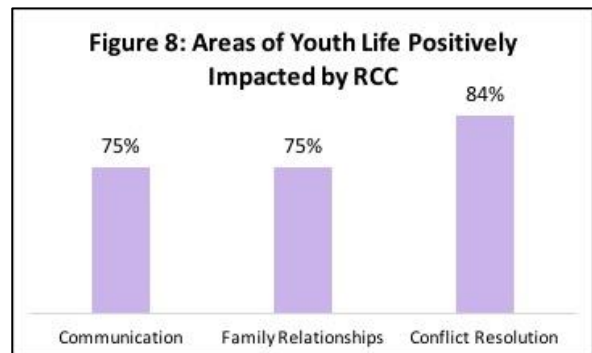
²⁵ <https://www.vera.org/centers/common-justice>

County's restorative youth diversion program could be a result of the program receiving a high number of low level offenses, which could be attributed to victims' disinclination to expend additional time and energy on what may be perceived as no more than a nuisance.

It is interesting to note that 55% of the 102 cases in the RCC program involved person charges (assault, battery, sexual assault/battery, robbery, or fighting), residential burglary charges, or vehicle theft charges, including grand theft auto.²⁶ Of the 35 victim satisfaction surveys that were completed, 69% were for the same category of cases. Additionally, of the 35 victim satisfaction surveys that were completed, 69% were for felony charges.

Youth Satisfaction

100 of the youth who participated in the RCC also completed post-conference satisfaction surveys. 94.9% of those young people said they would participate in the process again and 92.7% said they would recommend it to a friend. Moreover, 67% of them indicated RCC was "definitely" helpful while 33% said it was "mostly" beneficial. All of the surveyed youth said the process had changed them at least "in some ways" and found their experience to be satisfactory, with 64% being "very satisfied." Furthermore, over 90% of the youth felt their needs were considered throughout the process. Overall, while most of the respondents had not had personal contact with the juvenile court process in the past, every one of the 18% who had indicated feeling the RCC approach was "better" than the juvenile court process.



The respondents also identified several aspects of their lives that changed as a result of their participation in RCC. For instance, 75% indicated the process had either a "good" or "big positive" impact on their relationship with their family. Eighty-four percent noticed a "good" to "big positive" change in their ability to deal with conflict while 75% observed a "good" to "big positive" improvement in their communication skills. Additionally, 82% said they have used restorative practices such as repairing harm and truth-telling in their personal lives since participating in RCC.

With respect to the individual steps within the RCC, 92% of youth respondents identified "having support" as an "important" or "very important" part of the process while 90% said "having a voice" was also a critical component. As for the prep meetings with their facilitator, 92% of the young people found those meetings "important" or "very important," and 100% felt the same way about the conference stage, and 99% found it helpful to speak directly with the person they had harmed. Moreover, 83% indicated the process of developing the restorative

²⁶ The law characterizes vehicle theft (Vehicle Code 10851) and grand theft auto (Penal Code 487) differently, in which the former includes instances of "temporary" vehicle theft (or "joyriding") and the latter includes instances of longer-term vehicle theft.

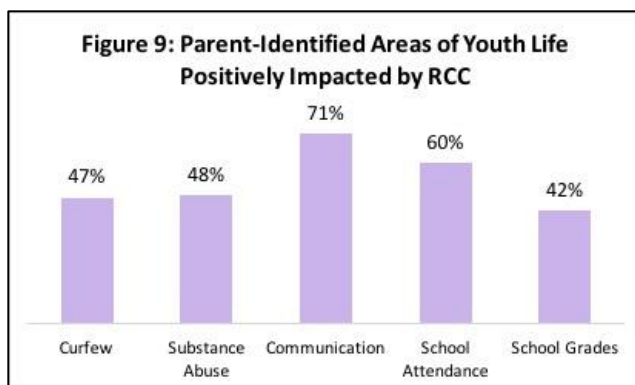
plan was “important” or “very important.” Finally, 100% of the youth identified their ability to avoid a criminal record as being an important part of the RCC with 91% also finding crucial the opportunity to avoid being placed on probation.

When asked to comment on the aspects of RCC they found most meaningful, one youth said, “it helped me to see all the damage I had done upon everyone.” Similarly, another young person emphasized the impact of “hearing the victim’s point of view because I didn’t realize the trouble they have had outside of what we did.” One participant spoke about the feeling of comfort that came along with apologizing while another youth said, “I hadn’t thought about all the relationships (self, family, community, and victim) in need of repair.” Finally, one respondent stated, “the most meaningful part was the plan because I set goals for myself to help myself, my family, and the community.”

Parent/Guardian Satisfaction

In 95% of the conferences, at least one parent/guardian participated. Of those who participated and later completed a post-conference satisfaction survey, 97.8% said they would participate in the process again and 98.8% said they would recommend RCC to a friend, with 52% having already shared their experience with family, friends, and others. Additionally, 69% were “very satisfied” and 14% “mostly satisfied” with the extent to which the facilitator prepared their child for the conference stage of the RCC. Overall, all parents/guardians felt the needs of their children were either “definitely” or “mostly” considered throughout the process.

When asked to reflect on the most meaningful elements of the RCC, 85% of parents/guardians found the “coordinator support to complete the plan” to be the most valuable piece in addition to the fact that participation prevented their child from being criminalized. Furthermore, 81% indicated “seeing youth take responsibility for their actions” and “knowing there was an alternative to prosecution” were also beneficial parts of the process. 74% felt the conference stage was another meaningful aspect, as was “having a voice in developing the plan” (70% of respondents), “meeting the victim(s) and hearing their story” (52%), and “hearing details of the incident” (52%).



Parents/guardians were also asked to comment on how the RCC process has affected ongoing issues with their children. With respect to problems around their child adhering to curfew rules, 35% of respondents indicated noticing “a little change” while 47% observed “definite” to “quite a bit of change.” Moreover, 48% of parents/guardians detected either “quite a bit” or “definite” change in their child’s use of illegal substances while another 35%

indicated “a little change.” Seventy-one percent of parents noticed “definite” to “quite a bit of change” in communication with their child and 29% recognized at least “a little change.” Finally, in terms of school issues, 60% felt there had been a change in their child’s school attendance

and 42% saw a “definite” to “quite a bit” of change in school grades with 25% recognizing “a little change.”

Many of the parents/guardians noted additional improvements in their relationship with their children following participation in the RCC process. For instance, 68% reported “quite a bit” or “definite” change in the frequency of conflicts between themselves and their youth while another 28% reported “a little change.” Similarly, 62% observed “quite a bit” or “definite” change in their ability to establish and instill respect for boundaries. Sixty-percent of respondents also found “quite a bit” or “definite” growth in their child’s respectful behavior and 61% saw “quite a bit” or “definite” progress in their child’s ability to follow through on commitments. Moreover, 80% reported their child talked with them more after having completed the RCC process.

Ultimately, a majority of parents/guardians were pleased with the program and its impact on the young people in their care. One parent found the process to be “a great opportunity for honest conversation and communication” that “deepen[ed] understanding of impact” and provided a “more developmental option than incarceration.” Another parent believed the “contact with the victims” was meaningful and was “grateful to them for understanding the overall situation of what my son did.” Likewise, an additional respondent appreciated the process for “allowing my son to step up and take the responsibility for his actions” as this “made him feel good about himself.” One parent commented “the process was professionally handled throughout and was very valuable. Our son successfully completed high school and is now a freshman at Santa Cruz. We are very grateful.” Some found it reassuring that “others were concerned with [their] child’s well being” and others suggested, “this type of process and talking is the only way kids learn.” In the words of one parent,

I absolutely believe that this is a better alternative for young [people], their families, and even the victims of crime. In this program, the young person is confronted with the seriousness of his crime and the harm it caused... He is given the chance to do something to make up for his crime and to apologize directly. This is so much better than going through the legal system in which the main object is for the culprit to protect himself by hiding details of what he did, if necessary. And in the legal system, restitution is impersonal. I am very grateful for this program and hope that it is available to adults breaking the law as well.

Reflections from Community Works’ RCC Facilitators

In addition to surveying victims, youth who caused harm, and their parents/guardians, the researchers also interviewed three of Community Works’ four RCC facilitators to better understand their opinions on the data and survey results and their approach to interacting with youth and other participants. The facilitators had been working within the RCC program from anywhere between a few months to several years.

When asked why they thought survey data showed both youth and parents/guardians felt the RCC process had had a positive impact on their family relationships and dynamics, one of the facilitators suggested, “hearing how the family is feeling about the incident, for the youth to see

beyond how this is affecting [him or her] to also see how this is affecting someone that they love so much is so powerful.” Another facilitator agreed, adding, “we ask the family: ‘what was it like to have your son arrested?’ or ‘what was it like right after the incident?’ That is a point of... less contention because instead of [the youth] being defensive it’s like ‘oh, you’re sad because you care about me. It’s not just that you’re angry with me.’” Moreover, one facilitator replied,

Also, it’s not just on the side of the youth. Sometimes it’s like the parents also misunderstand the youth. Sometimes the parents also make a commitment. Like “once a week I want to cook dinner with you because I can see we are growing apart and I don’t want to lose that relationship.” So I think the plan is important for the youth, but also important for the parent.

The interviewer also asked the facilitators to contemplate their explanations for why the post-conference satisfaction survey results found that both young people and their parents/guardians noticed a positive change in the youth’s ability to respond to conflict. One explanation offered for this was,

When you talk through the incident also talking through certain emotions is important. For example, understanding what you can do in certain situations... when you feel irritated. What are the causes, how do you usually react, and how can you recognize it and react differently in the future? Because when you first talk to them they can say things like “I didn’t do anything wrong,” but obviously when you talk more to them about it they know they could have reacted differently.

This idea that, with time, youth who participated in the program became increasingly amenable to the process was an overarching theme. In fact, another RCC facilitator stated, “the first time I talk with [youth] about an incident there may be some minimizing or there may be some taking themselves out of the situation – like maybe some blaming. I know there is something changing when there is less of that.” A different respondent noted, “I think sometimes youth want people to listen to them and hear their story,” suggesting that simply providing a rare opportunity for young people to be heard creates a catalyst for change.

Along with asking about the survey results, the facilitators answered questions about the quantitative data. For instance, when asked why they thought youth who completed the RCC program were less likely to be rearrested compared to the matched sample, those who enrolled but did not complete the process, and those who did not enroll at all, one facilitator responded,

Just being in conference can be intense, you’ve hurt someone or done something and you’re sitting in community with your family and someone you’ve harmed, that’s a lot of attention. You’re confronting yourself... When you have all these people behind you... you’re developing empathy, you’re feeling all these things from the whole perspective, not just your perspective. You’re probably thinking “I’m part of this community and this is who I am – is this how I want to be represented?” It’s a big wake-up call; it’s very powerful.

A second facilitator commented,

Once they complete the program they go back to their communities that are under-resourced, etc. So I think about how important it is to extend as many parts of the planning process to the young person. So, [for example,] if you give them a job or volunteer program at the local Boys and Girls Club it's a relationship but also those things stay even after the program ends. Because, realistically, if you steal a cell phone because you can't afford [it] even after the program you are still in that situation. So if you get them a job or into another program it's like a Band-Aid solution but also one that I'm always thinking about and trying to hack.

Finally, the interviewer asked if the facilitators had suggestions for ways to improve the RCC program. The primary response centered on identifying different approaches to addressing specific cases in which the regular RCC process falls short. "For example," one facilitator explained, "cases where there is a mutual fight and we have to identify one kid as an aggressor are difficult. Also, cases that don't have victims, for example drug cases." When asked about better ways to address situations involving mutual fights, the same facilitator answered,

I think circles²⁷ are definitely better but a lot of the time we don't have the people to participate. So for example, I have one case where we are trying to get a kid's friend to participate in a circle . . . it was a bogus arrest in the first place. So it's difficult because you can tell the kid's friend and the kid are not taking this seriously and it's difficult for me to push for a case where I can only hear from one side . . . and when I don't think the process is a good fit for the case it's hard for me to push. I think just setting up those binaries of responsible person and person harmed is difficult because at a certain point everyone is responsible.

Another facilitator added,

I've had a similar situation where the person arrested was Black and the other person in the fight was White and was not charged. And they've talked about it and resolved it but still there is one "responsible" person. That's a real conflict for me because it seems like we are doing someone else's dirty work because he shouldn't have been arrested in the first place. And I don't ever want to be complicit in state violence especially against Black youth . . . This specific police officer has arrested 5 youth and they are all Black and were involved in fights where the harmed youth is White. And I've tried to set up circles at the school and the police officer and the [student resource officer] don't respond so where is the responsibility in that?

²⁷ Circle process involves a facilitated dialogue using a talking piece and can be implemented in a broad range of contexts, from welcoming an individual back into the community after a period of incarceration to addressing conflict between community partners. Like RCC, circle can be used to address youthful wrongdoing by asking the young person, the victim, and their supporters questions about the incident and their needs. There are times when circle is a more appropriate model for addressing harm, such as in mutual fights.

This speaks to the challenges of eroding systemic bias in a post-arrest model. In Alameda County, the District Attorney's Office had previously encouraged restorative youth diversion at the police level, but this has not been the case in recent years.

COST SAVINGS ESTIMATES AND OTHER BENEFITS OF RCC

Along with lower recidivism rates and significant victim satisfaction rates, RCC offers governments the potential for significant cost savings. Youth who are subsequently rearrested following their first offense incur two types of avoidable costs: the costs associated with their first offense and the costs they incur through the later recidivism. The average cost of placing a young person on probation in Alameda County is \$23,000 per year.²⁸ This estimate does not include other costs resulting from a youth's involvement in the legal system, including those associated with the public defender's office, district attorney's office, court costs, and police costs post-arrest. In contrast, Alameda County's restorative justice program carries a marginal cost of approximately \$4,500 per case.²⁹

In addition to the cost savings through both diversion from the current juvenile legal system and reduced recidivism, RCC offers other societal benefits. For instance, this model serves to ease the pressure placed on courts, correctional facilities, and probation departments, all of which are overburdened by the number of individuals cycling through the criminal legal system each year. By reducing this drain on resources through the use of an RCC diversion program, criminal agencies can focus on providing services to those who need them most.

Another societal advantage associated with RCCs is the fact that victims are often more satisfied when their case is resolved through this approach as opposed to the traditional legal process.³⁰ This can largely be attributed to the fact that RCCs are victim-oriented, whereby the person harmed—as opposed to a judge—is instrumental in holding the young person accountable. Furthermore, RCC participation has been found to alleviate symptoms of post-traumatic stress associated with victimization.³¹

As the data from Alameda County shows, RCCs also help strengthen family and community ties, have the potential to reduce racial and ethnic disparities within the criminal legal system, and can reduce truancy, and improve graduation rates. Finally, because the RCC process focuses on healing harms and repairing broken relationships as opposed to punishment, many have found this approach more morally sound than adjudication and incarceration.

²⁸ Estimate based on 2010 probation costs, including salaries, equipment, contract costs, and detention costs. See appendix for reductions in re-arrest rates and note that re-arrest is not the same as re-adjudicated delinquent.

²⁹ This cost estimate was calculated by dividing the annual RCC operating budget at Community Works by the number of youth served.

³⁰ Zehr, H. & Macrae, A. (2004). *The little book of Family Group Conferences: New Zealand style*. Intercourse, PA: Good Books.

³¹ Umbreit, M. (2000). *Family Group Conferencing: Implications for crime victims*. St. Paul, MN: University of Minnesota, Center for Restorative Justice & Peacemaking.

COMPARATIVE ANALYSIS: SAN FRANCISCO’S “MAKE IT RIGHT” PROGRAM

Community Works is also the service provider for the San Francisco based “Make it Right” program. Initiated by the San Francisco District Attorney George Gascón, Make it Right differs from the Alameda County RCC program in five significant ways. First, the DA’s office only refers felony cases to the Make it Right program. Second, the diversion methodology is discretionless; the Managing DA of the Juvenile Division makes a charging determination on felony cases eligible for Make it Right, and then uses a randomization process to divert 70% of those cases to Make it Right pre-charge. Third, the program bifurcates the facilitator position into two roles: the facilitator prepares the case through the conference stage, and an Agreements Manager (who is housed in a separate program designed to support youth who have had contact with the law) works with the young person through the plan completion process. Fourth, while the District Attorney is welcome to attend conferences in Alameda County, no District Attorney or law enforcement is ever present in the San Francisco conferences. And fifth, San Francisco County’s Department of Children, Youth, and Families funds the program, whereas the Alameda County program is not primarily supported by county funds.

The Goldman School of Public Policy at UC Berkeley is completing a report based on a randomized control trial conducted with the Make it Right pilot. Preliminary data reported by the San Francisco DA’s office suggests that Make it Right has a significantly lower recidivism rate than the Alameda County counterpart described in this report (at 12 months, a 5% recidivism rate at the time of this report’s publication). Given that the service provider is the same for both programs, a future, more robust study exploring this disparity would be of benefit to the field. Notwithstanding the need for further analysis after the Goldman School study is published, some initial inferences can be drawn at this time.

Felonies Only

Several studies have shown that low-risk youth do better *without* intervention. Indeed, interventions of any sort for low-risk youth have been found to increase recidivism.³² Severity of the crime is a factor in determining risk.^{33, 34} Relatedly, international studies show that restorative justice is more effective for addressing more serious crimes.³⁵ The present study of Alameda County data confirms this; the “person” cases (i.e. robbery, assault) had a significantly lower recidivism rate than the “property” cases. At six months, RCC youth in Alameda County had a 7.4% recidivism rate for person crimes, as compared to RCC youth’s 18.4% recidivism rate at six months for property crimes.

Unlike Alameda County, San Francisco’s Make it Right program works solely with felony cases, and preliminary data currently places recidivism at 12 months at approximately 5%. Therefore,

³² Latessa, E. J., & Lowenkamp, C. (2006). What Works in Reducing Recidivism. *University of St. Thomas Law School*, 521-535.

³³ Baird, C. (2009). *A Question of Evidence*. Oakland, CA: National Council on Crime and Delinquency.

³⁴ Vincent, G., Guy, L., & Grisso, T. (2012). *Risk Assessment in Juvenile Justice: A Guidebook for Implementation*. Chicago, IL: John D. and Catherine T. MacArthur Foundation

³⁵ Sherman, L.W. & Strang, H. (2007) *Restorative Justice: The Evidence*. The Smith Institute.

both the Alameda County and San Francisco data, independently and in combination, suggest that low risk, low-level cases should be diverted to other diversion programming, while serious cases are best suited to restorative conferencing.

Of particular interest in the upcoming Goldman School study is whether the rate of victim participation in the Make it Right Program will be higher given the more serious nature of the crimes.

Charging Decision Followed by Randomization (Discretion-less Diversion)

In San Francisco, the Managing District Attorney of the Juvenile Division first makes a charging decision for all cases eligible for restorative justice, and then uses a randomization process to send cases to restorative justice treatment (70% of eligible cases), with the remaining cases comprising the control group (30%). The control group is charged and proceeds through the juvenile justice system. At the time of publication, Make it Right is the only “discretion-less diversion” restorative justice program for felonies in the United States.

This process serves two purposes: it removes the potential for 1) selection bias and 2) net widening. By choosing a set of criteria that makes a case eligible for restorative justice (i.e. age of youth, class of crimes, number of priors), the San Francisco DA’s office ensures that there is no racial/ethnic or other bias in determining which cases are diverted. To increase Make it Right’s impact on reducing racial and ethnic disparities, the DA’s office purposely aligned eligibility criteria to include crimes for which youth of color are disproportionately arrested/charged/incarcerated. And by making the charging decision prior to the diversion decision, the San Francisco DA can be certain that it is not sending cases to restorative justice that it would not have otherwise taken seriously.³⁶

By contrast, the Alameda County District Attorney’s office hand-selects cases for RCC from among all cases that come across its desk. To that end, cases vary in seriousness, with the majority being at the lower end of that spectrum. Nonetheless, the program still reaches a majority youth of color, although it is unclear whether the cases are ones that would ultimately have been charged if they had not been sent to the RCC program.

Bifurcated Facilitator Role

In San Francisco, as in New Zealand, RCCs are bifurcated into two stages, the conference and plan completion. A different person manages each stage; the Facilitator completes preparation for and facilitation of the conference itself, while an Agreements Manager oversees plan completion. By contrast, in Alameda County, an RCC Coordinator plays both roles.

The advantage of San Francisco’s approach is that each position is free to focus on their stage of the process and not have attention directed to various stages of various cases. The youth has two people, not just one, working on their behalf. To solidify the relationship between the Agreements Manager and the youth, the Agreements Manager meets with the youth before

³⁶ Although a decision to charge is made after randomization into the restorative justice treatment group, the decision to charge is withheld until the RCC process is complete. As with Alameda County, when the plan is completed, no charges are ever filed.

the conference and attends the conference as well. In addition, the Agreements Manager becomes a specialist in local resources for the youth participants so that plan completion can be better resourced and operate more smoothly.

Lack of DA/Law Enforcement Presence

While an agreement is in place that prevents the prosecution in both counties from using information learned in the restorative conference in any subsequent judicial proceeding, the mere presence of law enforcement or a prosecutor in conferences necessarily changes the tenor of the dialogue. Recognizing this, the San Francisco District Attorney has opted to not have any presence in the conferences. While we have been unable to disaggregate recidivism data on the basis of District Attorney presence in the conference in this report, we believe it would be an important issue for future study.

County Funding

Finally, the role of funding plays an obvious impact on any program's success. In San Francisco, unlike in Alameda County, the majority of the funding for the Make it Right program comes from San Francisco County's Department of Children, Youth, and Their Families. The funding includes the cost of the facilitator and agreements manager positions, as well as program costs.

Notably, the funder and the District Attorney are in agreement that a program goal is to not allow net widening. Therefore, in San Francisco, Community Works is under no pressure to take low-level cases from the DA to meet a funder quota for the number of cases they complete a year. Funders, then, have an important role to play in upholding standards.

DISCLAIMER

As a matter of transparency it is important to note that this report is authored by the Restorative Justice Project which is currently led by sujatha baliga.³⁷ baliga was instrumental in the early development of the restorative justice movement in the Bay Area and her 2008 Soros Justice fellowship was partly used to initiate the restorative juvenile diversion program that evolved into the current Community Works RCC program described in this report.

³⁷ Lowercase intentional.

APPENDIX

	6 month re-arrest rate	6 month recidivism rate	12 month re-arrest rate	12 month recidivism rate	18 month re-arrest rate	18 month recidivism rate
RCC Youth	20.6% (n=102)	13.7% (n=102)	26.3% (n=76)	18.4% (n=76)	32.1% (n=56)	19.6% (n=56)
Control Group	25.6% (n=125)	20.8% (n=125)	39.6% (n=106)	32.1% (n=106)	44.9% (n=98)	36.7% (n=98)

RCC Youth – Boys	22.0% (n=82)	14.6% (n=82)	27.9% (n=61)	19.7% (n=61)	37.0% (n=46)	23.9% (n=46)
Control Group -- Boys	25.3% (n=99)	21.2% (n=99)	41.7% (n=84)	33.3% (n=84)	46.2% (n=78)	38.5% (n=78)
RCC Youth – Girls³⁸	15.0% (n=20)	10.0% (n=20)	20.0% (n=15)	13.3% (n=15)	10.0% (n=10)	0.0% (n=10)
Control Group -- Girls	26.9% (n=26)	19.2% (n=26)	31.8% (n=22)	27.3% (n=22)	40.0% (n=20)	30.0% (n=20)

RCC Youth – Black	23.5% (n=51)	15.7% (n=51)	30.2% (n=43)	23.3% (n=43)	30.3% (n=33)	24.2% (n=33)
Control Group -- Black	28.0% (n=50)	22.0% (n=50)	36.4% (n=44)	31.8% (n=44)	38.5% (n=39)	33.3% (n=39)
RCC Youth – Latinx	21.9% (n=32)	15.6% (n=32)	29.4% (n=17)	17.6% (n=17)	53.8% (n=13)	23.1% (n=13)
Control Group -- Latinx	32.4% (n=37)	27.0% (n=37)	45.5% (n=33)	39.4% (n=33)	58.1% (n=31)	51.6% (n=31)
RCC Youth – White	0.0% (n=6)	0.0% (n=6)	0.0% (n=6)	0.0% (n=6)	0.0% (n=5)	0.0% (n=5)
Control Group -- White	18.2% (n=11)	18.2% (n=11)	36.4% (n=11)	27.3% (n=11)	40.0% (n=10)	30.0% (n=10)

RCC Youth – Person Charge	14.8% (n=27)	7.4% (n=27)	26.3% (n=19)	15.8% (n=19)	28.6% (n=14)	14.3% (n=14)
Control Group – Person Charge	25.6% (n=39)	23.1% (n=39)	31.4% (n=35)	28.6% (n=35)	37.5% (n=32)	34.4% (n=32)
RCC Youth – Property Charge	29.2% (n=48)	18.8% (n=48)	28.9% (n=38)	21.1% (n=38)	35.7% (n=28)	21.4% (n=28)
Control Group – Property Charge	16.7% (n=30)	13.3% (n=30)	37.0% (n=27)	29.6% (n=27)	46.2% (n=26)	38.5% (n=26)

³⁸ Note that the recidivism rate for RCC girls after 18 months of completing the program is so low (>1%), because there was recidivism data for very few girls (n=3) after that amount of time.

ACKNOWLEDGEMENTS

Thank you to Dr. Isami Arifuku, formerly of the National Council on Crime and Delinquency, and to Impact Justice's Antoinette Davis and Dr. Angela Irvine for their contributions to the data analysis and presentation of data in this report. A special thanks to Community Works for their participation in data collection and interviews. We also thank the Alameda County District Attorney's Office and the Alameda County Probation Department for their participation in this program and study. Our gratitude is also deeply extended to the San Francisco District Attorney's Office, particularly to George Gascón himself, to Jean Roland, Kathrine Miller, and Tara Anderson, for their consistent availability and to their collective dedication to evidence-based efforts to benefit crime victims, the youth who harmed them, their families, and communities. Finally, this report could not have been completed without generous support from the Akonadi Foundation and the Zellerbach Family Foundation.

Impact Justice is a national innovation and resource center committed to reducing the number of people involved in US criminal justice systems, improving conditions for those who remain incarcerated, providing meaningful opportunities for successful re-entry, and attending to crime victims' needs. Home to some of the foremost leaders in juvenile justice, violence prevention, research and evaluation, restorative justice, and youth development, Impact Justice provides an array of technical assistance to criminal justice and community stakeholders. For more information, please visit www.ImpactJustice.org.

Attachment B
to Submission of sujatha baliga



Transformative Justice

Prosecution Strategies to Reform the Justice System and Enhance Community Safety

George Gascón

District Attorney

City & County of San Francisco

2011-2019



October 3, 2019

Over the past decade, there has been an essential and powerful awakening in the United States regarding criminal justice. After decades of harsh and inhumane strategies, we are finally moving towards a more compassionate paradigm that sees dignity in all people. As District Attorney of San Francisco, George Gascón has been a leader of this awakening, demonstrating that what is just is also what is effective.

I have known George since we worked together in the 1980s and 1990s—when crime and punishment were at their peak. What we both saw was that more punishment, with its destructive path, often leads to more crime. George became the thoughtful leader he is today by reimagining our criminal justice system to put the wellbeing of the community first, to see the humanity of all people, and to emphasize that accountability should apply to all of us—including and especially, the powerful.

Throughout his career, George has fought for what is right often at great personal sacrifice, but he has never stopped reaching, and our communities are safer because of it.

A handwritten signature in black ink, reading "Gregory J. Boyle". The signature is fluid and cursive, with a large initial "G" and a stylized "B".

Father Gregory Boyle
Founder, Homeboy Industries

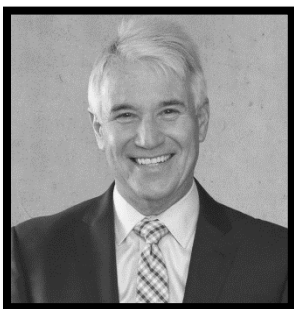
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What has been clear throughout my career—from my time as a beat cop in Los Angeles, working my way up through the ranks to Police Chief in two jurisdictions, and as District Attorney of San Francisco over the past nine years—is that a healthy community is the key to public safety.

Our communities are truly safe only when its members have the opportunity to thrive. But just as a community cannot thrive when crime, chaos, and despair are rampant, it also cannot thrive when it is over-policed, or when many of its members are incarcerated with little hope of rehabilitation. For some time, I think we've known intuitively that communities must be strong, healthy, and whole to also be safe. This sentiment is validated by research that shows community-based organizations play a strong role in preventing both violent and property crimes.ⁱ

Yet, while well-intentioned, the American criminal justice system has caused a tremendous amount of damage to our communities. Indeed, it has been called, “a nearly perfect recidivism machine,”ⁱⁱ based on its terrible outcomes, and enormous financial and social costs. We know incarceration significantly *increases* a young person's likelihood of committing future offenses,ⁱⁱⁱ and yet we continue to incarcerate juveniles, and our prisons are disproportionately filled with young adults.

By focusing on punishment at the expense of rehabilitation, our jails and prisons churn out individuals who are hardened, traumatized, less employable, and who statistics suggest are more likely than not to reoffend. That increases the toll on victims and the harm to our broader community. The criminal justice system as we know it does not help people get better. Too often, it makes things worse.

In 2011, when I stepped into office as San Francisco District Attorney, California's justice system was at a breaking point. Its failure was consuming the state, and sucking resources away from education and public health, the very things that communities need to succeed. It was clear that the system had to change, and that by transforming ourselves, we could achieve transformation for our community and undo some of the damage of the past.

Over the ensuing years, the San Francisco District Attorney's Office pursued a bold agenda both within our jurisdiction and across the state, while also improving the performance of the Office, and most importantly, advancing public safety. Change is hard, especially for entrenched institutions. The changes we implemented were sometimes unpopular, but we have demonstrated that not only can reform be

accomplished without sacrificing safety, it is in fact *necessary* for our communities to become safer.

Since 2011, SFDA has increased charging rates and focused on more serious and violent crimes, while achieving historically high trial conviction rates of over 80%. In 2019, San Francisco is on track to experience the lowest crime rate since 2012, similar to the lows of the 1960s. The violent crime rate is at a ten-year low, and the number of homicides in the City is half of what it was in 2007. We did this without growing our jail population. In fact, San Francisco is the only urban jurisdiction with a half vacant jail. If other jurisdictions followed our lead, the United States would end mass incarceration.^{iv} Importantly, we are also reducing juvenile involvement with the system, with a 50% decline in the number of juveniles referred to the juvenile justice system in the past seven years. Finally, reforming the system reduces wasteful spending by reducing recidivism and unnecessary police and prosecutorial expenditures. It also reduces the racial disparities that have become the system's hallmark.

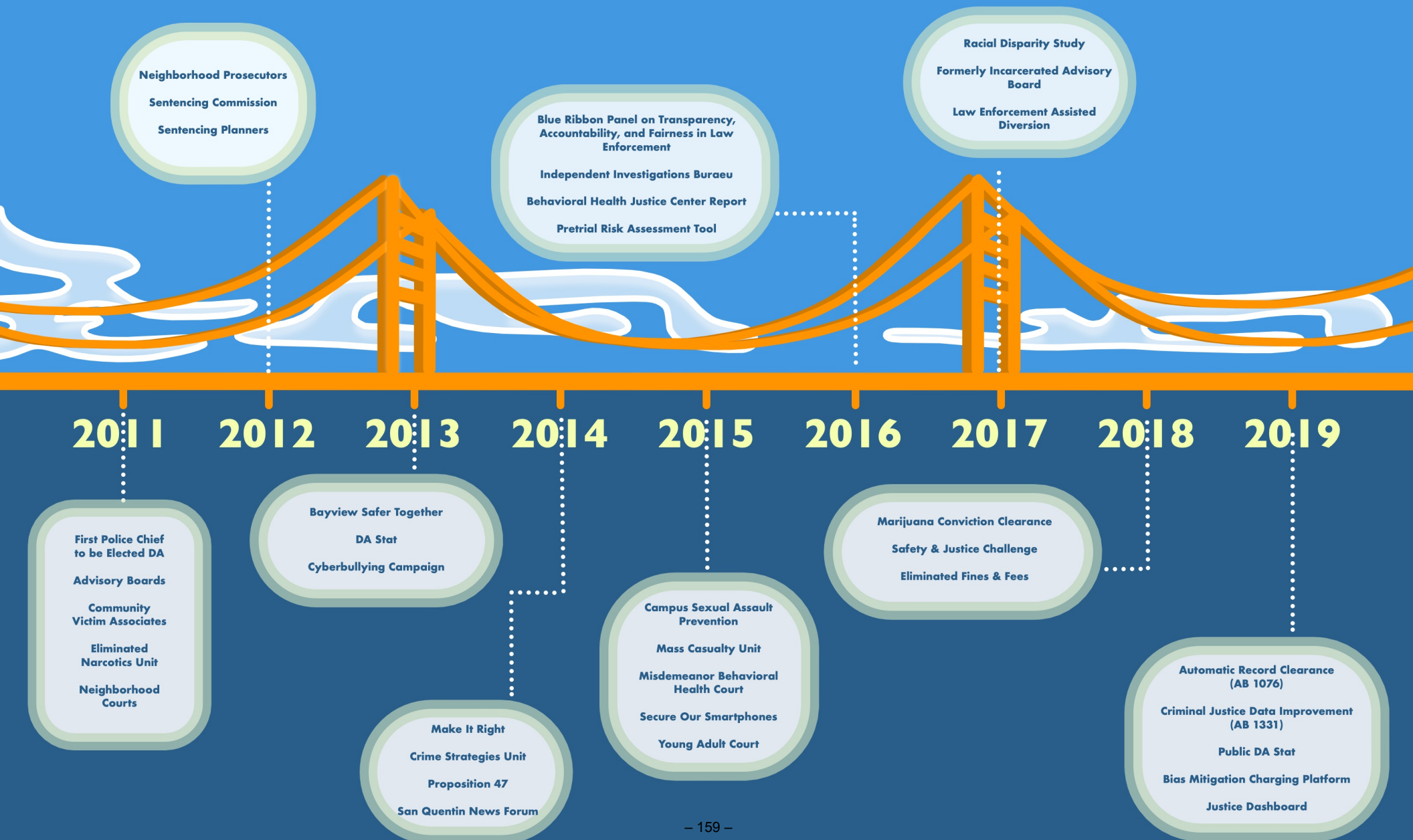
We still have much to do to make our system of justice more effective and more fair, to make our streets safer and our communities healthier. Reform is a long road, and the strategies and interventions outlined in this report were designed over the past nine years of my tenure as San Francisco District Attorney to move us away from an intolerable status quo to true community safety.

- Strategy 1 Cultivate Accountability
- Strategy 2 Advance Equity
- Strategy 3 Promote Dignity
- Strategy 4 Divest & Reinvest



George Gascón

San Francisco District Attorney George Gascón over the years



STRATEGY 1: CULTIVATE ACCOUNTABILITY

In theory, the justice system is defined by the pursuit of truth and accountability. Yet, a true accounting for crime is exceedingly rare in the United States. The majority of courtrooms are used as an oratorical battleground between defenders and prosecutors, with judges serving as referees, and little opportunity for the accused or the victim to address what really matters: why did this happen, what can we do to address it, and how can we make things better, so it won't happen again?

Prosecutors traditionally define a “win” as sending someone to a cell, often for as long as possible, regardless of whether this intervention has any deterrent or rehabilitative effect, or helps the victim recover from the incident. Defense attorneys often define a “win” as getting someone off, with little consideration for the impact of the defendant's actions on victims, communities, or themselves. Jury

trials—considered the pinnacle of just process—mirror and magnify this drama, while failing to address either the harm or the root causes of criminal behavior. There is little connection, communication, or humanity in court proceedings. In this environment, finding the truth, and achieving real accountability is nearly impossible.

“DAs have the power to fundamentally change the way we run our courts, sentence people, and help victims recover from harm,” George Gascón.

It is not surprising then that this system fails to deliver for everyone involved: the victim, the accused, or the community. In response to this failure, all too often, criminal justice system actors point fingers at each other: police departments blame prosecutor's offices; prosecutors blame the judiciary; defenders blame police officers, with victims and survivors left as bystanders to their own trauma. This blame game happens despite the fact that most of the people who work in the justice system are committed public servants who share a desire to help people and make society better. Unfortunately, the system they work in is simply not designed to produce healing, justice or safety, and as a result, fails to hold itself accountable to its stated objectives.

For too long, this broken system has cost our society too much, both in real dollars, as well as human suffering. These costs are incurred not only by those touched by the system, but by every member of our society.

It is time to reimagine our justice system to cultivate real accountability. Prosecutors have both the responsibility and the power to make this happen. Several examples of different approaches implemented by the San Francisco District Attorney's Office (SFDA) are described below, ranging from interventions for those engaging in harmful and criminal behavior to efforts to hold powerful businesses and law enforcement accountable—including our own office—and to use government resources responsibly.

Accountability in Action

Make It Right Restorative Community Conferencing

The traditional justice system treats crime as an act against the state, resolved through conviction and punishment. Victims face drawn-out cases and results that often bear little connection to the harm caused. In contrast, restorative justice offers an opportunity to hold individuals accountable for their actions in a manner that actually “makes it right” for those they have impacted – from the direct victim of their act to themselves, their families, and their communities.

Put most simply, restorative justice is “a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible.”^v It offers accountability grounded in relationships and resolved through acts of repair. It puts the harmed party at the center of the process, and is designed to humanize, heal, and empower all parties. It is both a new, and a very old, way to approach accountability for harm.

Restorative practices are not one size fits all – they exist along a continuum, depending on the centrality of the victim’s role and the structure of dialogue and decision making. Some of the most common restorative models include victim-offender dialogue, peacemaking circles, and restorative community conferencing.

Restorative Justice offers accountability grounded in relationships and resolved through acts of repair.

In 2014, District Attorney Gascón collaborated with restorative justice experts and community-based practitioners to launch Make It Right—a restorative justice model for youths, aged 13-17, facing prosecution for felony charges. Through Make It Right, young people are given the option, *before* their cases are charged, to participate in restorative community conferencing. In this process, the youth come together with the person harmed and supporters for both parties in a community-based, facilitated dialogue to develop an agreement for the young person to repair harm, address root causes, and make amends. This collective agreement identifies concrete actions the youth will take to address harm caused to the harmed party, the community, the youth’s family, and him/herself. With support from a community-based case manager, the young person has a six-month period to complete their agreement. If successful, the case is not prosecuted. The process occurs wholly outside the traditional justice system, and all proceedings are confidential.

To date, almost 50 youth accused of felony crimes have completed Make It Right in San Francisco. In order to evaluate this model, our office partners with researchers to conduct the “gold standard” of evaluations – a randomized controlled trial, in which eligible youth were randomly selected to participate in the program or go through the traditional system. Youth who have completed the program have a 24-month recidivism rate of just 13% - while similar young people who experienced the traditional justice system response had a recidivism rate of 53%. Based on this 40 percentage point reduction in recidivism – and on the positive feedback of victims, youth and other participants – the SFDA is currently expanding the program to include young adults ages 18-25.

Crime Strategies Unit

All too often, law enforcement responses to crime are overly broad and far-reaching, sweeping too many people into the criminal justice system with a one-size-fits all approach. Rather than improving community safety, this makes crime worse by increasing recidivism and destabilizing neighborhoods. Community safety is better served when prosecutors focus on developing interventions for those people who are engaging in the most harmful conduct.

After learning of the success of District Attorney Cyrus Vance’s Crime Strategies Unit (CSU) in New York, District Attorney Gascón established the second Crime Strategies Unit in the United States in 2014. San Francisco’s CSU is a multi-disciplinary, problem-solving team of Neighborhood Prosecutors, investigators, and analysts that seeks to identify crime drivers and develop data-driven, narrowly tailored interventions to hold those responsible accountable.

The Neighborhood Prosecutors are embedded in the police district stations of the communities they serve, acting as liaisons between residents and law enforcement, and learning about local crime problems first-hand. This boots-on-the-ground expertise is combined with advanced data analytics to develop an accurate picture of each district’s crime challenges and victimization patterns. What’s more, CSU interventions incorporate community engagement, public awareness campaigns, and crime prevention through environmental design, among other strategies, to ensure that crime is addressed holistically, in partnership with the community and other stakeholders.

The CSU approach ensures that prosecution resources are used efficiently to achieve the greatest impact for community safety. Successful CSU operations include efforts to reduce auto-burglary, illegal firearms, organized retail theft, large-scale fencing, and human trafficking.

Secure Our Smartphones

In 2012, the increasing popularity of smartphones coincided with a surge in violent smartphone robberies. A stolen handset could be sold on the street for \$200 and then fenced to countries overseas where they could sell for as much as \$2,000.

District Attorney Gascón was the first official to demand smartphone manufacturers take action to ensure their customers weren’t victimized, and requested they implement theft deterrent technology on their phones, later regarded as a “kill switch,” to make the valuable devices worthless in the event that they were stolen. He co-chaired an international coalition of law enforcement officials, big city mayors, and consumer rights groups called “Secure Our Smartphones,” which called on the smartphone industry to implement the existing technology. The companies refused, and the increasingly global epidemic hit its peak in 2013 with 3.1 million victims in the United States alone.

Subsequently, District Attorney Gascón drafted and helped pass legislation, Senate Bill 962, which required every smartphone sold in California to come with “kill-switch” technology. The Secure Our Smartphones initiative and the corresponding legislation have been credited with a 50% reduction in smartphone robberies in San Francisco. Additionally, the required technology was implemented on handsets sold worldwide, and as a result, cities around the globe have seen similar reductions.

Internal Investigations Bureau

Communities are safer when their relationship with law enforcement is built on cooperation and respect for shared values and rights. In advancing community safety, prosecutors must also commit to building trust between their own office and the community they represent. It is the prosecutor's responsibility to hold all people accountable, including law enforcement personnel, when a violation of the law has occurred.

Following a scandal in which 14 San Francisco Police Department (SFPD) officers were found to have exchanged numerous highly disturbing racist and homophobic text messages, District Attorney Gascón formed the Blue Ribbon Panel on Transparency, Accountability, and Fairness in Law Enforcement in May 2015. This Panel, comprised of three retired judges—the Honorable LaDoris H. Cordell, the Honorable Cruz

Reynoso, and the Honorable Dickran M. Tevrizian—from across the state of California, was tasked with investigating whether the bias demonstrated by the texts reflected institutionalized bias in SFPD, an investigation pursued by no other city agency. Subsequent to the

launch of the panel, and in the wake

of six fatal officer-involved shootings in 2015, the Office of Community Oriented Policing Services (COPS) of the Department of Justice completed a separate review in October 2016. Together, these reviews identified pervasive issues regarding transparency, oversight, community trust, and bias in SFPD, and recommended hundreds of reforms. Also, in 2016, the San Francisco Civil Grand Jury identified concerning delays in the investigation of use of force incidents. Up until this point, SFPD was responsible for investigating itself in the event of a critical use of force incident.

As of October 2019, San Francisco has not experienced a fatal police shooting in more than 570 days, the longest stretch between shootings in over a decade.

In December 2016, after reviewing the findings and evaluating the need for reform around police misconduct and officer-involved shootings, SFDA established the Independent Investigations Bureau (IIB) to promote law enforcement accountability by conducting independent investigations, and criminally prosecuting officers who violate the law. IIB is an independent unit with the SFDA's office comprised of attorneys, investigators, and paralegals, that reports directly to the District Attorney. IIB takes the lead on every officer-involved shooting and in-custody death that occurs in San Francisco, as well as serious use of force incidents, submits findings to the California Department of Justice, and disseminates reports to the public. Since its founding, IIB has reduced the time to conduct officer-involved shooting and in-custody death investigations by more than 50% and prosecuted more than 20 officers for police misconduct. As of this writing, there hasn't been a fatal police shooting in San Francisco in over 570 days, the longest stretch between shootings in over a decade.

DA Stat

In May 2019, SFDA became the first District Attorney's Office in the state of California to share prosecutorial data and metrics with the public via the DA Stat Dashboards. In the digital age, the

collection, reporting, analysis and transparency of data are central to good governance, and DA Stat reflects SFDA's commitment to public accountability and transparency.

District Attorney Gascón originally launched DA Stat as an internal performance measurement program in 2013, to measure success in achieving SFDA's goals, and to demonstrate the value of using data to ensure the fair and effective administration of justice. Since then, SFDA has become one of the most renowned data-driven prosecutors' offices in the United States.^{vi} DA Stat is built on a commitment to data collection within the San Francisco District Attorney's Office, collaboration across local criminal justice agencies, and statistical analysis that generates meaningful operational metrics that inform internal policy development and resource allocation. The public version of the [tool](#), available on the SFDA web site, allows the public to explore metrics across the criminal process dating back to 2011.

STRATEGY 2: ADVANCE EQUITY

Perhaps more than any other institution, the criminal justice system reflects the legacy of inequitable social and economic policies, practices, and investments that have disadvantaged and harmed communities of color, and particularly African-Americans, in the United States. Fixing this dynamic requires recognition that institutional racism and implicit bias permeate every aspect of the criminal process.

As the highest ranking law enforcement official in any given jurisdiction, as well as the central decisionmaker in the criminal process, prosecutors can take steps to address this legacy and advance equity throughout the criminal justice system. In fact, as administrators of justice, prosecutors have the moral and ethical obligation to identify and tackle racial disparities of all kinds within the criminal justice system, from policing to pre-trial detention to prosecution to adjudication.

In a big city like San Francisco, rich in racial, socioeconomic, and other forms of diversity, the goal of eliminating racial disparities requires changes on many fronts. It means developing new approaches to criminal prosecution. It calls for collecting data from arrest through sentencing, and critically assessing policies and practices that underlie prosecutorial decisions. It means investigating the differential treatment of marginalized groups that have resulted from racially disparate law enforcement and taking steps to undue that harm. It also calls for a better understanding of our own unconscious biases, which if left unchecked, become powerful agents in perpetuating disparities.

Equity in Action

Young Adult Court

As a culture, we have extended our concept of childhood over the last few decades. Traditional "adult" benchmarks such as careers, marriage and parenthood are increasingly happening later in life. We declare young adults too young to drink, smoke or rent cars. Research in neurological and

behavioral development has helped us to better understand that this dynamic period of growth continues into the mid-20s.

We collectively view most young adults as kids, still growing up. Peer pressure, impulsivity and risk taking are expected – and sometimes even celebrated. We afford them the opportunity to make mistakes in a nurturing, prosocial, forgiving environment (college) where we encourage them along a path to a bright future. There is broad acceptance that they will outgrow delinquency. But for other young adults – and particularly young men of color – we take a vastly different approach. We effectively flip a switch on their 18th birthday (and sometimes earlier). We ignore data that tells us they are likely to outgrow negative behaviors. Many publicly funded supports abruptly end. We view their behaviors through the lens of the adult criminal justice system, which is neither designed nor equipped to meet their needs. They emerge from the system with a criminal record that further impedes their ability to make their way into adulthood. We expect more of them, while providing much less.

Young Adult Court (YAC) was created to ensure that disadvantaged young adults who find their way into our justice system are met with the resources, understanding, support, and orientation toward a bright future that our community and culture typically afford to people this age. Launched by SFDA in 2015, in partnership with the San Francisco Superior Court, Adult Probation, the Public Defender, clinical and workforce development partner agencies, the court offers a collaborative, problem solving model for young adults ages 18-25 facing a wide range of offenses, including violent and nonviolent felonies. The YAC team has worked collectively to develop a unique program model that is both developmentally and trauma-informed. Each YAC participant is assigned to a specially-trained clinician, who collaborates with the entire YAC team to engage, motivate, and support the participant.

Since 2015, almost 100 young people have graduated from the program, embarking on a path into adulthood with critical supports and perspective – and without a paralyzing criminal record. The program consistently operates at capacity, has garnered widespread interest and is being replicated in Massachusetts, Texas, and Southern California.

Mitigating Bias

Recognizing that race and ethnicity affect every discretionary point, whether consciously or unconsciously, in the criminal justice system, District Attorney Gascón has actively pursued a research agenda to develop the tools and resources prosecutor's offices need to root out both explicit and implicit bias.

In order to reduce bias in the justice system, we must understand it: we must measure the problem and determine what is driving it, so that we can develop effective interventions. To that end, SFDA collaborated with UC Berkeley and University of Pennsylvania researchers to analyze racial disparities in criminal case processing from 2008 to 2016 in San Francisco.^{vii}

The researchers found that across nearly every measure, African American defendants fared worse than any other ethnic group, and that these disparities were driven primarily by case characteristics determined prior to the prosecutor's charging decision, such as arrest charges, criminal history, probation status, and pretrial detention. While the researchers found that SFDA was not

exacerbating preexisting racial disparities in the criminal justice system, and in many instances was mitigating them, they recommended that prosecutors maximize opportunities to safely release appropriate defendants from custody pretrial and diversion opportunities that avoid conviction in order to further reduce disparities.

The researchers also found that Proposition 47, a 2014 ballot initiative co-authored by District Attorney Gascón, significantly narrowed racial disparities throughout the criminal process. For example, Proposition 47, which changed certain low-level drug and property crimes from felonies into misdemeanors, decreased the sentence disparity between white and black defendants by 50% in San Francisco. Proposition 47 demonstrates that prosecutors can spearhead sentencing reforms that result in real reductions in the racially disparate treatment of community members by the criminal justice system.

In 2019, SFDA went further, and sought the assistance of the Stanford Computational Policy Lab to develop a new open-source bias mitigation tool that uses artificial intelligence to diminish implicit bias in prosecutorial charging decisions. The tool, which was developed at no cost by the Stanford Computational Policy Lab, ingests police incident report data and automatically eliminates demographic information, and other details that can serve as a proxy for race, in order to ensure prosecutors' charging decisions are not influenced by implicit biases. In addition to the redaction tool, each attorney is required to review a Prosecutor Implicit Bias Card, directing the reviewer to act consciously and deliberately, be self-aware, and create a process to serve as a check on implicit bias. This policy is one action in a series of steps to mitigate and eliminate the impact of implicit bias on prosecutor decisions and defendant outcomes.

Marijuana, Record Clearance & Redemption

There may be no prosecutorial action more specifically transformative and rehabilitative than facilitating arrest and conviction record relief. Just as prosecutors are uniquely positioned to influence the charging of an arrest and the adjudication of a complaint, they are uniquely positioned to enable record clearance, both through legislation, as well as policy and practice.

Criminal records hamper the employment, housing, and educational prospects of over 8 million Californians and 77 million Americans, in most instances, trapping them in paper prisons for life. Nearly 90% of employers, 80% of landlords, and 60% of colleges screen applicants' criminal records.^{viii} The *Survey of California Victims and Populations Affected by Mental Health, Substance Issues, and Convictions* found that 76% of individuals with a criminal conviction report instability in finding a job or housing, obtaining a license, paying for fines or fees, and having health issues. A National Institute of Justice study found that having a criminal record reduced the chance of getting a job offer or callback by 50%. All of these obstacles disproportionately harm communities of color because they are disproportionately impacted by the justice system.

Ultimately, record clearance benefits community safety, since lack of access to employment and housing are primary factors that drive recidivism. Criminal records are serious barriers to successful reentry, and also come at a great cost to California's economy. Nationally, it has been estimated that the United States loses roughly \$87 billion per year in terms of gross domestic product due to employment losses among people with criminal records.

In contrast, record clearance offers people the opportunity to thrive. Researchers at the University of Michigan Law School found that individuals whose records are cleared have extremely low rates of recidivism and experience profound improvements in their employment, including a 25% increase in wages.^{ix}

Recognizing that record clearance advances both public safety—by reducing recidivism—as well as justice and equity, District Attorney Gascón pursued a clean slate legislative and policy agenda throughout his tenure. Successful initiatives included legislation to increase record clearance opportunities for people who successfully completed prosecutor-led pre-filing diversion programs (Senate Bill 513) and ensuring that cleared arrest records are not disseminated publicly (SB 393).

District Attorney Gascón was also a co-author of Proposition 47, passed in 2014, which implemented three broad changes to felony sentencing laws, reclassifying certain theft and felony drug possession offenses from felonies to misdemeanors, allowing those serving sentences for those offenses to petition the court to resentence their case, and allowing those who had completed their convictions for these offenses to petition the court to reclassify their criminal history records as misdemeanors. Proposition 47 has reduced racial disparities in arrests^x and sentencing,^{xi} reduced recidivism, and increased funding to treatment programs across the state, all while crime rates remain comparable to the low rates observed in the 1960s.^{xii}

SFDA took this work further when marijuana legalization went into effect in California, and started a national movement, when it became the first prosecutor's office in the country to proactively clear marijuana convictions. Proposition 64 includes provisions to clear records for prior marijuana convictions, but like most record clearance statutes, it requires petitioning the court which requires the affected party to get a lawyer, take time off work, go to court, and file the necessary paperwork. In contemplating what prosecutors could do to end marijuana prohibition and undo the harm caused by the war on drugs, which was disproportionately experienced by communities of color, it became clear that rather than serve as roadblocks to record clearance prosecutors could become expeditors.

With Code for America's support, SFDA dismissed and sealed over 9,300 felony and marijuana convictions. The result is that 1,336 people no longer have a felony on their record, and 729 people have no record at all.

In January 2018, District Attorney Gascón announced that SFDA would commence reviewing and clearing all marijuana convictions in San Francisco dating back to 1975, requiring no action by those with such convictions on their record. Shortly thereafter, Code for America approached the Office about using *Clear My Record* technology to take this effort to automate and scale the effort. The combination of a bold reform agenda with Code for America's technology inspired a wave of marijuana record clearance across the state and the country.

SFDA's record clearance efforts culminated in drafting the nation's most comprehensive automatic record clearance law, which was signed into law in October 2019. AB 1076 removes barriers to record clearance by removing the burden on the petitioner and automating arrest and conviction relief for individuals already eligible under current California laws. This policy leverages technology

to efficiently update criminal records that are disseminated by the California Department of Justice for employment, housing, education, and licensing purposes. Specifically, AB 1076 automatically clears records for arrests that did not result in conviction after the statute of limitations has passed, and automatically clears convictions on local sentences to probation and jail once the sentence is completed for persons who have remained crime free, including both misdemeanors and felonies. The California Policy Lab estimates that nearly 500,000 Californians will be impacted within the first five years of AB 1076 implementation.

STRATEGY 3: PROMOTE DIGNITY

At the center of a modern justice paradigm, one that truly transforms the criminal justice system, is dignity—dignity for the victim, for the accused, and for the community. Take a walk down the hallway of any courthouse in America, and you will find that dignity for any of these groups is rare, if nonexistent. The criminal justice system has become a machine that depersonalizes people, and thereby undermines humanity. At the end of the day, we must recognize that the justice system is about people, all of whom have personal agency and equal rights under the law, and all of whom deserve dignity and respect. Furthermore, we must acknowledge that on any given day someone can be the accused, the victim/survivor, and a member of the community – and we must heed the limitations of these labels. These experiences are not static or homogenous, nor do they define the person.

Dignity cannot just be a concept or a value to strive for, we must infuse it into policies and procedures at every stage of the process. When we do, we see that it is in fact a community safety tool. For victims, dignity means having a real voice in the process through victim-centered justice. For communities, dignity means self-determination. For the accused, it means opportunity, treatment, and accountability, all of which reduce recidivism.

Dignity in Action

Victim Centered Justice

When a person has been harmed, wronged, or experienced loss at the hands of another, they seek justice and healing after victimization. The criminal justice system ensures that the accused has rights and resources to defend themselves and services to facilitate their re-entry to the community, but little attention and resources are directed to the victims whose lives may be forever changed by the act of another. Crime victimization takes away a person's power and safety and many endure the effects of trauma long after the justice system has completed their role. The vast majority of victims do not find justice in the system, as many offenders are not known, arrested, charged or convicted. It is important for us to have a system that takes care of victims/survivors regardless of the outcome of the criminal case.

Victim Centered Justice goes beyond what the system dictates, and instead focuses on the needs of victims, including compassionate and sensitive delivery of services without judgement. It ensures victims have a voice in the criminal justice process, that they can speak to the harm they have experienced and get the tools and resources they need to return to their lives as they were before the crime. Physical, mental, emotional and economic losses experienced by a victim need to be addressed in order to facilitate healing and recovery for a victim.

The SFDA Victim Services Division provides comprehensive services to victims of crime to help mitigate their trauma, that begin at the inception of the crime with crisis support, including navigation through the justice system, safety planning and financial resources to pay for health, mental health, safety and relocation.

Not everyone experiences crime victimization in the same way. People who are vulnerable and marginalized can have additional barriers and needs in accessing services following a criminal victimization. SFDA has developed several specialized services to respond to populations that need extra support and assistance. Services range from special court escort for victims whose safety is at risk because of their immigration status, to those experiencing threats from a defendant.

In 2015, in response to the growing number of active shooter and mass casualty crime events, SFDA pioneered the first local and regional response of victim service advocate planning, training and deployment for critical incidents. This model has now been replicated across California. SFDA has developed multiple outreach and engagement efforts to reach victims who have traditionally avoided interaction with system-based victim advocacy including providing trainings to partners, extensive community outreach events, funding partnerships and collaboration with service providers, and out-stationing community-based advocates to target communities with the highest rates of criminal activity but lowest rates of service utilization.

The SFDA Victim Services Division uses data, stakeholder input and self-identification data from victims to inform our services and direct our resources. Since 2014, there has been a 75% increase in the number of victims served thanks to efforts to be more responsive, accessible and involved in our community.

Safer Together

San Francisco's Bayview-Hunters Point community (Bayview) has long borne the effects of socio-economic marginalization, crime and violence – on the streets and within families. Over the last few decades, Bayview has been the site of numerous efforts focused on crime reduction grounded in suppression and enforcement tactics. Other efforts provided short-term investments that failed to address root needs of the community.

In 2013, the SFDA was awarded a \$1 million grant from the US Department of Justice that presented us with an opportunity to do things differently. This initiative, called “Safer Together,” was rooted in the idea that supporting Bayview community members to heal from exposure to crime and violence could improve community safety. This approach was supported by research demonstrating that people who have been victims of crime are the most likely to be future victims, and that victimization of young people can lead to delinquent behavior – that, “hurt people hurt people.”

Bayview Safer Together turned, in part, to science to help us understand what we instinctively know: that untreated trauma has serious and insidious impacts on our brains, our bodies, and our behavior – and that there are effective ways to heal. But, more deeply, Safer Together was based on the conviction that government and community need to work together in active partnership grounded in relationships and personal agency – not paternalism. Community members and organizations are the key actors in creating a healthy, sustainable community, and government needs to invest in their success.

To this end, SFDA's Safer Together strategies were developed to promote both healing and capacity building – on individual, organizational, and community levels. District Attorney Gascón brought in professionals in trauma treatment to share their expertise with the community – and looked to the community for its own expertise. We heard from individuals impacted by crime about how they wanted to be treated, what they needed to heal, and even what they wanted to be called. We passed the federal funds to Bayview community-based organizations to create new programs of their own design, grounded in neighborhood culture, history and values.

To be sure, Bayview needs significant, relevant and respectful investment beyond the opportunities afforded by this initiative. And across the country, relationships between communities and law enforcement are fractured and need healing. But core to this healing is a recognition that the authentic, combined effort of community stakeholders and government agencies is greater than the sum of its parts. In other words, we are Safer Together.

Behavioral Health Justice

The intersection of mental illness and the justice system is painfully apparent on our streets and in our courtrooms and jails. Across the country, 60% of jail inmates experience mental health challenges. In San Francisco, 40% of inmates in the county jail receive treatment from Jail Behavioral Health Services. The justice system has long been the default response to behaviors fueled by untreated mental illness and addiction—but incarceration and criminal records do not address those underlying needs.

The ability to access treatment is key to individual dignity and to community safety. While we should strive to provide services before a crime is committed, prosecutors must collaborate with justice system partners, treatment providers, peers and families to ensure that we have meaningful, timely pathways to treatment at every decision point in the system. In San Francisco, programs like Law Enforcement Assisted Diversion, Mental Health Diversion, Behavioral Health Court, and forensic case management provide critical off-ramps from arrest, prosecution and incarceration to healing, wellness, and safety. We must be bold to make meaningful change in this space, and San Francisco's

Bayview Safer Together turned, in part, to science to help us understand what we instinctively know: that untreated trauma has serious and insidious impacts on our brains, our bodies, and our behavior – and that there are effective ways to heal.

quality of life would benefit tremendously if [the recommendation](#) from a panel of experts convened by District Attorney Gascón in 2016, to implement a Behavioral Health Justice Center, was adopted by the Mayor and the Board of Supervisors.

Sentencing Planners

Prosecutors play a key role in recidivism reduction and need practical tools to assist them in making informed decisions. They have discretion over which cases to bring, and what offenses to charge, plead and sentence. This discretion creates the opportunity to re-think how we achieve community safety. The SFDA Sentencing Planning program, the first of its kind in California, brings staff focused on addressing criminal behavior to make communities safer into the Office to work hand in hand with prosecutors.

In an effort to break the cycle of crime and victimization, the Sentencing Planning Program, implemented in 2012, focuses on the accused and their readiness for services and rehabilitation that address their criminogenic factors. Utilizing an evidence-based risk, needs and protective factor tool SPIn™ (Orbis), Sentencing Planners evaluate the individual's history and presenting situation to develop a plan that builds on the defendant's static and dynamic strengths and challenges. Along with face to face interviews, case file reviews, and input from service providers and system partners, Sentencing Planners then employ their expertise in local resources and services to develop a plan that provides options for the prosecutors to use in the disposition of the case. Recommendations include vocational training, mental health services, substance abuse treatment, housing and volunteer recommendations, and when requested, length and type of supervision. The prosecutor then decides whether to incorporate the Sentencing Planner's recommendation. A 2014 UC Berkeley study of the Sentencing Planning found compelling evidence that it reduces recidivism and prosecutor reliance on incarceration.

San Quentin News Forums & the Formerly Incarcerated Advisory Board

There is a growing movement in our country to better understand what effective and lasting criminal justice reform looks like. Essential to this movement is incorporating all perspectives, especially those of individuals who have experienced the system firsthand and are committed to making it more just for all. In 2014, District Attorney Gascón became the first District Attorney to visit San Quentin State Prison, marking the beginning of a special relationship between the Office and the prison. During that first visit, forum participants included SFDA Chief of Staff, Sentencing Planner, Director of Community Engagement, and Chief of the Criminal Division. About 40 people attended this half-day event.

The SFDA's Office now regularly takes trips to San Quentin State Prison, with each visit including a growing number of prosecutors from the Office, elected officials and judges from throughout the Bay Area. What's more, in 2017, SFDA led more than 40 elected district attorneys and representatives from other agencies throughout the United States to San Quentin. The vision is that such exposure allows prosecutors to learn more about the men, their lives, remorse and redemption, and results in more informed and equitable prosecution. The profound discussions during the San Quentin Forums also inspired SFDA to create the nation's first Formerly Incarcerated Advisory Board.

STRATEGY 4: DIVEST & REINVEST

To be truly successful in efforts to cultivate accountability, advance equity, and promote dignity, prosecutors must acknowledge that our criminal justice system has played an outsized role in American society. It has served as the default response for a broad range of social issues better addressed through other systems and community strategies. And, it has offered an illusory promise of safety through “tough on crime” measures that are grounded in political expedience rather than their ability to make our communities safer.

If we are truly committed to thriving individuals and communities, it’s well past time for our justice system to divest from some of its current practices – and to reinvest the resulting savings in the actors best equipped to do that work.

Divestment can, and must be, achieved in several ways. First, we can and should reduce the justice system footprint. Rather than viewing the system as our default mechanism for addressing harm, we must recognize that much of this work may be done better by other actors, whether it be the community or other public systems, and through other models, such as restorative justice and treatment. Second, we must reduce the severity of our system response. We need to scale back our default use of incarceration, long periods of supervision, and overwhelming conditions of probation. In some cases, this should be replaced by linkages to other, more appropriate circles of support and accountability, including supportive pretrial release, diversion, treatment, and alternatives to incarceration. In other cases, we should look to research to help us determine responses, such as probation length and terms, based on risk and evidence-based practices. Finally, we can reduce collateral consequences. From fines and fees to barriers to much-needed services and benefits, we need to ensure that system involvement doesn’t cast a shadow over an individual’s ability to embark on a positive pathway.

Similarly, reinvestment also has many forms. At an individual level, we can invest in personal agency—supporting individuals to identify their own goals and pathways to success. At the community level, we can invest in neighborhood groups to resolve harm and implement prevention strategies, and in community-based organizations that offer culturally appropriate services and enduring relationships. And at the systems level, we can divert funds from the justice system to those agencies best equipped to attend to social needs, including public health, housing, education, employment, and other critical government supports. Reinvestment is not only about redirecting funding – it must include redirecting power in all its other forms: voice, decision making authority, access to resources, and information.

Divestment and Reinvestment in Action

Neighborhood Courts

Justice reform is not only about changing the way our system operates – it’s also about reducing the footprint of the system itself. We need to recognize that in many situations, the community is the best responder to harm, and that well-being and engagement are themselves community safety strategies. And we need to put our money where our mouth is by reinvesting in the community in ways that are designed to prevent and respond to wrongdoing.

Launched in 2012, Neighborhood Courts is an innovative model for diverting adults facing prosecution for low-level offenses from prosecution – and centering the response to these crimes in the communities that are directly impacted.

Non-violent misdemeanor cases that would otherwise be prosecuted are offered the opportunity to have their case resolved in ten Neighborhood Courts across the City (one for each police district), where trained neighborhood volunteer adjudicators hear the matters, speak with the participants

about the harm caused by their actions, and issue individualized “directives” designed to repair that harm and address risk factors. There are no lawyers or judges in Neighborhood Court, and proceedings are confidential. Once the participant completes their directives, the case is discharged and the participant is eligible to have their arrest record cleared. Cases that do not resolve in Neighborhood Court are returned to the SFDA for prosecution.

In some cases, Neighborhood Courts participants are directed to pay “community restitution” to the Neighborhood Justice Fund, managed by the SFDA. On an annual basis, these funds are distributed to community-based organizations for projects of their own design to enhance the safety, livability and cohesion of San Francisco neighborhoods. In this way, participants are directly contributing to the vitality of the communities that have been harmed by their behavior – and doing so in ways that honor the communities’ values and priorities.

The Neighborhood Courts program is a partnership of the SFDA, community-based organizations with expertise in restorative practices and client support, and the people of San Francisco.

Neighborhood Courts was identified as a 2015 Innovation in Criminal Justice by the United States Department of Justice/Bureau of Justice Assistance, Association of Prosecuting Attorneys and Center for Court Innovation. The model has been replicated in Los Angeles and Yolo County California, is currently undergoing implementation in Santa Cruz and Contra Costa Counties, and has garnered interest from jurisdictions across the country. In 2019, the RAND Corporation launched a three-year comprehensive evaluation of Neighborhood Courts, funded by the National Institute of Justice.

Since its inception, over 4,000 cases have been diverted to Neighborhood Court, 130 community members have served as adjudicators, and 78 grants have been awarded to community-based organizations through the Neighborhood Justice Fund.

Safety and Justice Challenge

In 2018, SFDA secured a \$2 million grant from the John D. and Catherine T. MacArthur Foundation to reform the local justice system. The funding supports the implementation of strategies that address the main drivers of local jail incarceration, including unfair and ineffective practices that take a particularly heavy toll on people of color, low-income communities, and people with mental health and substance abuse issues.

The City and County of San Francisco has been reducing its jail and prison populations at a pace that far exceeds state and national rates. According to a recent analysis, San Francisco's current incarceration rate of 279 per 100,000 population is less than half the rate for California, and less than one third the national rate. Furthermore, the analysis indicated that this decline in the correctional population has occurred at the same time as San Francisco's crime rate has reached historic lows.^{xiii}

“If the rest of the country could match San Francisco’s rates, the number of individuals under correctional supervision would plummet from 7 million to 2 million. The nation’s 2.3 million prison and jail populations would decline to below 700,000 and mass incarceration would be eliminated.”

Despite a significant drop in San Francisco's incarceration rate and advancements in the county's custodial programs and community-based alternatives, there is still an overrepresentation of young adults of color and those with behavioral health needs in our jails. To continue reducing the jail population safely, the collaborative will implement five key strategies aimed at addressing system inefficiencies and disparities, meeting the needs of those with behavioral health and substance abuse issues, and instituting non-jail options for individuals facing charges for lower-risk offenses.

The specific strategies include pre-arrest and pretrial diversion, criminal sentencing, and correctional strategies that emphasize rehabilitation and reduce recidivism, improvements to case processing efficiency, enhanced services for people with mental illness or substance abuse issues involved with the justice system, and root out disparity and racial bias. Over the next two years, San Francisco will develop evidence-based criminal sentencing and correctional strategies that emphasize rehabilitation and reduce recidivism, emphasize fairness, root out disparity and racial bias, prioritize public safety and victim protection, and efficiently use criminal justice resources. Ultimately, this funding will help eliminate the need for a replacement jail facility.

Fines & Fees Taskforce

District Attorney Gascón has long held the view that there are times when the best move government can make is stopping a harmful action or not being a barrier to a good policy. Reducing and eliminating fees does not reduce consequences, it reduces barriers to reentry. When we reduce financial barriers, we increase a person's ability to secure employment, a job, healthcare and a place to live, facilitating successful reentry as well as victim restitution payments.

Convened in October 2016, the San Francisco Fines and Fees Task Force, of which SFDA was an active participant, chose to focus on the elimination of criminal justice fines and fees charged to people exiting the system. The initial focus on “ability to pay” later shifted to address the question, “What are they paying for?” and “Are there instances where we (the system) can stop assessing fines and fees?”

In collaboration with the Financial Justice Project, Public Defender, Sheriff, Adult Probation, Juvenile Probation and Superior Court, the Task Force eliminated 10 county-controlled fees assessed by the Superior Court. SFDA drafted and signed the petition to the Superior Court which lifted more than \$32.7 million in debt from unpaid criminal justice administrative fees for 21,000 people.

The CONNECT Program

Quality of life citations for infractions like loitering or sleeping on a sidewalk are often issued to people struggling with homelessness, who in most instances cannot afford to pay. Unpaid citations—and \$300 civil assessments for missing court dates—can add up to court debt that damages credit scores, makes it hard to secure housing, and limits access to some supportive programs, creating yet more barriers to individual and community well-being.

Seeking a more equitable and automated solution to this problem, District Attorney Gascón formalized a policy allowing people struggling with homelessness to resolve specified citations after receiving 20 hours of social services: the CONNECT Program. CONNECT enables people to meet their obligation by getting the help they need from a trusted social service provider in the community. Examples of services include: support in accessing food, housing, mental health counseling, employment, and drug and alcohol services.

Prior to the development of the automated process, individuals could be required to appear in court three or more times before receiving the benefit of the program, or much needed services. This arguably restricted the benefit to lower need and higher resourced populations. Now, under the CONNECT Program, once an individual completes 20 hours of social services, the citation is automatically dismissed. The time previously devoted to court appearances is used instead to connect to services that will prevent further involvement in the system. As of June 2019, 75 individuals have been connected to social services, preventing over \$22,000 in civil assessments levied.

CONCLUSION

This is an extraordinary moment in American justice. Across the country, we are witnessing a new understanding of the power of prosecutors—not only to affect individuals’ lives, but to effect broad justice system reform. And there is much to be done. We need to challenge deeply rooted traditions. We need to examine stale assumptions about the drivers of crime and community safety. And we need to reckon with our long history of overcriminalization of and underinvestment in communities of color. This work is as daunting as it is necessary. But the principles set out in these pages—cultivating accountability, advancing equity, promoting dignity, divesting and reinvesting—offer a scaffold upon which prosecutors from diverse jurisdictions can build their own models for enhancing community safety and equity through transformative justice.

Initiatives, 2011-2019

Advisory Boards (2011)

“We are safer when community members and law enforcement work together to identify public safety issues and solutions.”

-District Attorney George Gascón

Developing a lasting public safety model requires partnering with our many diverse communities to better understand, prevent, and address issues facing specific groups in our city. The San Francisco District Attorney’s Office has nine advisory boards that meet several times a year to do just this. Each group consists of merchants, businesses, community-based organizations, neighborhood representatives, and residents who identify key and relevant policy issues affecting the communities they represent for further investigation and action.

- African American Advisory Board
- Arab, Middle Eastern, Muslim, & South Asian Advisory Board
- Asian/Pacific Islander Advisory Board
- Formerly Incarcerated Advisory Board
- Jewish Advisory Board
- Latino Advisory Board
- LGBTQ Advisory Board
- Victim Advisory Board
- Women Advisory Board

The **Formerly Incarcerated Advisory Board**, founded in 2016, is the first board of its kind associated with a prosecutor’s office. The board is composed of formerly incarcerated individuals, many of whom were ‘lifers’ in prison before being granted parole, who shed light on the criminal justice system through the lens of those who have been directly impacted by the system. Members meet regularly with the DA to discuss meaningful efforts to create supportive systems for safe and productive reintegration of formerly incarcerated men and women into society.

Automatic Record Clearance (2019)

Eight million California residents have criminal convictions on their records that hamper their ability to find work and housing, secure public benefits, or even get admitted to college. Millions more have old arrests on their record that never resulted in a conviction but remain as obstacles to employment. Nearly 90% of employers, 80% of landlords, and 60% of colleges screen applicants' criminal records. The Survey of California Victims and Populations Affected by Mental Health, Substance Issues, and Convictions found that 76% of individuals with a criminal conviction report instability in finding a job or housing, obtaining a license, paying for fines or fees, and having health issues. A National Institute of Justice study found that having a criminal record reduced the chance of getting a job offer or callback.

Lack of access to employment and housing are primary factors driving recidivism, criminal records are serious barriers to successful reentry and come at a great cost to California's economy. Nationally, it has been estimated that the U.S. loses roughly \$65 billion per year in terms of gross domestic product due to employment losses among people with criminal records.

Historically, California law has allowed individuals to clear arrests that did not result in a conviction, and to clear convictions that are eligible for dismissal by petitioning the court. However, this imposes a burden on affected individuals to be made aware of their eligibility and retain an attorney to proactively file the necessary petition. It is estimated that these barriers have prevented over 90% of eligible people from obtaining record clearance, relegating millions of Californians to 'paper prisons' for life due to their criminal records. Barriers to accessing criminal record relief perpetuate the long history of disproportionate impact of the justice system on socioeconomically disadvantaged communities, and communities of color in particular.

In 2019, District Attorney Gascón co-sponsored Assembly Bill 1076, the most comprehensive automatic record clearance legislation in the United States, with Assembly member Phil Ting and Californians for Safety & Justice. AB 1076 was inspired by SFDA's groundbreaking work on [Marijuana Conviction Relief](#), and builds on the success of the [C.A.R.E Act](#). Through those efforts, it became clear that the most efficient and effective way to clear eligible arrest and convictions was to do so at the source—through automation—rather than require a decentralized, paper-based effort across California's 58 counties. AB 1076 mandates that the California Department of Justice undertake the following automation measures for all persons arrested and/or convicted on or after January 1, 2021:

- Identify eligible persons whose arrests have not resulted in conviction and/or who have served their time and remained crime free;
- Add a notation to the record stating that relief has been granted;
- Prevent the dissemination of records that have been granted relief to a specific subset of employers and boards; and,
- Notify courts of cleared records and prohibit courts from disclosing cleared records to anyone other than the subject or law enforcement.

Through these steps, it is estimated that California will provide a path to true redemption and opportunity to 100,000-200,000 Californians each year.

Bayview Safer Together (2013)

San Francisco's Bayview-Hunters Point community (Bayview) has long borne the effects of socio-economic marginalization, crime and violence – on the streets and within families. Over the last few decades, Bayview has been the site of numerous efforts focused on crime reduction grounded in suppression and enforcement tactics. Other efforts provided short-term investments that failed to address root needs of the community.

In 2013, the SFDA was awarded a \$1 million grant from the US Department of Justice that presented us with an opportunity to do things differently. This initiative, called "Safer Together," was rooted in the idea that supporting Bayview community members to heal from exposure to crime and violence could improve community safety. This approach was supported by research demonstrating that people who have been victims of crime are the most likely to be future victims, and that victimization of young people can lead to delinquent behavior – that, "hurt people hurt people."

Bayview Safer Together turned, in part, to science to help us understand what we instinctively know: that untreated trauma has serious and insidious impacts on our brains, our bodies, and our behavior – and that there are effective ways to heal. But, more deeply, Safer Together was based on the conviction that government and community need to work together in active partnership grounded in relationships and personal agency – not paternalism. Community members and organizations are the key actors in creating a healthy, sustainable community, and government needs to invest in their success.

To this end, SFDA's Safer Together strategies were developed to promote both healing and capacity building – on individual, organizational, and community levels. District Attorney Gascón brought in professionals in trauma treatment to share their expertise with the community – and looked to the community for its own expertise. We heard from individuals impacted by crime about how they wanted to be treated, what they needed to heal, and even what they wanted to be called. We passed the federal funds to Bayview community-based organizations to create new programs of their own design, grounded in neighborhood culture, history and values.

To be sure, Bayview needs significant, relevant and respectful investment beyond the opportunities afforded by this initiative. And across the country, relationships between communities and law enforcement are fractured and need healing. But core to this healing is a recognition that the authentic, combined effort of community stakeholders and government agencies is greater than the sum of its parts. In other words, we are Safer Together.

A New Jail is Not the Answer to our Mental Health Crisis (2015)

All Signs Point to Continued Reduction in our In-Custody Population

Fifty percent of jail cells in San Francisco are vacant, and all signs point to continued reductions in our in-custody population. Our office released a study, in collaboration with researcher James Austin of the JFA Institute detailing exactly this. The report, entitled “Eliminating Mass Incarceration: How San Francisco Did It,” found the following about San Francisco jail and prison populations:

Since 2009, the percentage of inmates requiring psychiatric medication has increased 30%.

- The City has reduced its jail and prison populations at a rate that far exceeds state and national rates.
- Its current jail and prison rate of incarceration is 279 per 100,000 population—less than half the rate for California and a third the national rate.
- If the rest of the country matched San Francisco’s rates, the number of individuals under correctional supervision would plummet from 7 million to 2 million.

Funds Should be Directed to Boost Mental Health Treatment Services

San Francisco has a mental health treatment problem, not a jail capacity problem. Since 2009, the percentage of inmates requiring psychiatric medication has increased 30 percent, and the number of contacts between inmates and Jail Behavioral Services has increased 24 percent. Moreover, roughly 40 percent of San Francisco’s approximately 1,300 in-custody jail population has some degree of mental illness. Eighty percent of all police calls involve mental-health issues. And yet, we continue to run a 120-day average wait time for mental health beds through our Behavioral Health Court. Simply put, while our needs for community- based mental health treatment continue to soar, our in-custody services are increasingly insufficient.

Letter to Mayor Ed Lee

District Attorney George Gascón’s letter to Mayor Ed Lee made clear that although San Francisco has experienced an excess of jail beds, we have accrued unconscionably long waiting lists for residential mental health treatment beds.

Our office stands by its belief that, rather than warehousing individuals with mental illness in jail, where their needs are unmet and their risk to the community may increase, San Francisco should lead the state and the country in pursuing innovative alternatives to incarceration through improved access to mental health treatment.

Board of Supervisors Rejected Plans for New Jail

In December 2015, the Board of Supervisors rejected plans to spend nearly a quarter of a billion in taxpayer dollars to build a new jail.

Behavioral Health Justice Center (2016)

The Concept Paper

In 2016, District Attorney Gascón and four experts in the field of mental health released a concept paper titled, “Justice That Heals: Promoting Behavioral Health, Safeguarding the Public, and Ending Our Overreliance on Jails,” proposing the development of a new Behavioral Health Justice Center (BHJC). The proposed BHJC is a collaborative, independently administered, interagency center designed to 1) bridge the current divide between the criminal justice system and community-based treatment programs for mentally ill individuals, and 2) ensure diversion at the earliest possible opportunity.

Why BHJC?

Research shows that incarcerating people with mental illness undermines long-term community safety by increasing recidivism. The concept paper for BHJC outlines a series of recommendations to create a continuum of mental health care services in a centralized service center. It would provide, for the first time, a purposeful, coordinated system of care with different levels of service and appropriate treatment options for individuals with mental illness in the justice system.

The co-location of these services will enhance public safety by promoting a seamless system of care for individuals with mental illness to interrupt the cycle of homelessness, addiction, and criminal activity.

60% of jail inmates across the country
have mental health problems.

40% of SF County Jail detainees
receive care from Jail Behavioral
Health Services.

4 Tiers of BHJC

The BHJC would have four tiers of service and treatment to address four distinct levels of need:

Level 1: Emergency Mental Health Reception Center and Respite Beds. A 24-hour venue for police to bring individuals experiencing a mental health episode for an initial mental health assessment.

Level 2: Short-term (2-3 week) Transitional Housing and on-site residential treatment.

Level 3: Long-term Residential Dual Diagnosis Treatment. Longer-term intensive residential psychiatric care and substance abuse treatment in an unlocked setting.

Level 4: Secure Inpatient Transitional Care Unit. Short-term, voluntary inpatient treatment for persons with mental illness transitioning to community-based residential treatment programs.

The Big Idea Challenge: Thinking Beyond Our Daily Work (2017)

In 2017, District Attorney Gascón challenged the members of our office to think beyond their daily duties about strategies that can improve the ways we operate, serve our community and improve public safety. Employees across the office were encouraged to respond to this “Big Ideal Challenge.” Over 150 proposals were submitted, and a randomly-selected review committee from all divisions of the SFDA chose a winning proposal: The Youth Education & Safety (YES) Program.

The YES Program connects prosecutors with SFUSD middle school students to share information relevant to their lives and build positive relationships between law enforcement and young teens. Our office worked with leadership at the school district to select a middle school in need of support, and then partnered with staff at James Lick Middle School to identify issues that have a broad impact on the middle school community: social media, cyberbullying, threats, fights and weapons. ADAs then created interactive presentations on these topics that combined legal information with practical tips on how to stay safe and seek help when needed. Over the 2018-2019 school year, veteran prosecutors met with students in assemblies and classrooms to connect with students, present the information, and work together to build a culture of safety.

Blue Ribbon Panel on Transparency, Accountability and Fairness in Law Enforcement (2016)

Need for Transparency

In March 2015, fourteen SFPD officers were identified as participating in a series of racist text messages that expressed virulent sentiments towards African Americans, women, LGBT and others. The challenge for the SFDA became how to review the police work these officers conducted, determine the existence of racial and other inappropriate biases, and identify how these biases translated into racially driven or motivated police enforcement in approximately 4,000 incidents.

In the post-Ferguson context, it is clear that there is a need for more transparency in law enforcement. While most peace officers carry out their difficult and often dangerous responsibilities with dedication, honor and integrity, with “Textgate,” the deplorable actions of a few SFPD officers overshadowed the good of the whole, and eroded public confidence in law enforcement.

The Blue Ribbon Panel Team

District Attorney Gascón assembled a Blue Ribbon Panel of three retired jurists from other jurisdictions who are regarded for their intelligence, experience and non- partisan interests to conduct a top to bottom analysis of possible racial bias in the department.

Seven law firms provided working groups to assist the panel on specific issues. In addition to reviewing the involved officers and cases, the panel and working groups examined aggregate data and policies of the SFPD, received community input, and, ultimately, issued a comprehensive report.

The Blue Ribbon Panel consisted of the Honorable LaDoris H. Cordell, the Honorable Cruz Reynoso, and the Honorable Dickran M. Tevrizian.

The Panel reviewed over 4,000 incidents associated with the "Textgate" officers and collected over 70 data points for each incident report.

Findings of the Report

In its report, published in 2016, the Blue Ribbon Panel found evidence supporting institutionalized bias within the SFPD. Several key findings revealed that the available statistical data indicated racial disparities in the department’s stops, searches, and arrests. Officer accounts described a systemic and widespread culture of bias, and personnel data revealed a need for greater racial and gender diversity within the department. The Panel also found that the department lacked any meaningful internal disciplinary review process and employed use-of-force policies contrary to best practices.

Campus Sexual Assault Program (2015)

The San Francisco District Attorney's Office launched the Campus Sexual Assault Program in 2015 to address the high rates of sexual assault, general knowledge shown in stats, underreporting of such acts, and the lack of training and established procedures for addressing such crimes on college campuses.

Removes Barriers to Reporting

The Program facilitates cooperation and collaboration between campus administrators, campus law enforcement, SFPD, and the SFDA's Office through memorandums of understandings ("MOUs") intended to improve reporting and investigation of sexual assaults on college campuses.

Now, under the Program, when a victim reports an act of sexual abuse to a party to an MOU (e.g., campus law enforcement), that party should inform the victim of the other participants to the MOU.

7 Schools have Signed the MOU

- University of San Francisco (USF)
- University of California San Francisco (UCSF)
- UC Hastings School of Law
- San Francisco Conservatory of Music
- City College San Francisco
- Academy of Art
- Golden Gate University

Increased Reporting is Essential

From a law enforcement perspective, increased reporting is essential. Data show that campus sexual assaults are underreported to local law enforcement when a victim first reports through an internal, on-campus channel. Because the trauma that victims experience in the aftermath of an attack can be deeply isolating, our office believes that victims should receive comprehensive information about the numerous services and legal options available to them.

More Services are Available

The MOUs instruct all participating schools to provide victims with contact information for our Victim Services Division ("VSD"). Advocates from our VSD will help victims better understand the expanded range of services now available to them under Senate Bill 519, which our office sponsored.

Combatting Cyberbullying (2013)

Every year, about half of American teens receive personal attacks—verbal or visual cyberbullying—on their phones or computers. These messages have profound impacts on the wellbeing of youth, and ripple into their schools and communities.

In 2013, District Attorney Gascón partnered with San Francisco Unified School District and Common Sense Media to address this critical issue. SFDA and Common Sense co-hosted a presentation and conversation with parents and students at James Lick Middle School educate parents about the risks and realities of online communication, and to provide them with strategies for helping their children to positively—and safely—navigate the digital world. This event complemented SFUSD efforts that were directed at students, including monthly sessions on digital citizenship and an annual Digital Media Safety Instruction Day for students of all ages.

Consumer Arrest Record Equity Act - C.A.R.E (2017)

Sponsored by District Attorney Gascón, the Consumer Arrest Record Equity (C.A.R.E.) Act helps people who have been arrested, but not convicted of a crime by creating procedures to ensure sealed arrest records are actually sealed, so they do not appear when an employer, landlord, or other third-party member conducts a background check.

Protecting Sealed Arrest Information in an Equitable Way

The C.A.R.E. Act (SB 393) establishes a uniform process for individuals to petition the court to seal their arrest records. The act also updates criminal records at both the local and state level to ensure that credit reporting agencies and the California Department of Justice do not inadvertently disseminate sealed arrest information.

Prevalent and Problematic

Many prospective employees and housing applicants are rejected solely based on having an arrest record on file. A 2012 study by the Society for Human Resource Management shows that 69% of reported organizations used criminal background checks on all job candidates, but only 58% allowed candidates to explain their criminal history. The impact of unsealed arrest records is especially magnified for communities of color, who are arrested at higher rates compared to their size within the overall population.

By removing arrest records for individuals not convicted of a crime, the C.A.R.E Act removes barriers that are holding back Californians from employment and housing opportunities.

Court Escort Policy (2017)

In 2017, individuals were being publicly identified as undocumented immigrants in open court and Immigration and Customs Enforcement (ICE) agents actively apprehended undocumented immigrants at courthouses. In response, on March 17, 2017, California Chief Justice Cantil-Sakauye sent a letter to Attorney General Jeff Sessions and Department of Homeland Security Secretary John F. Kelly about these reprehensible tactics. According to Chief Justice Cantil-Sakauye, the practice “undermine[s] the judiciary’s ability to provide equal access to justice.”

If an undocumented victim or witness fears that their immigration status is going to be aired in public, they are far less likely to come forward, and the chilling effect this has on participation undermines the fair administration of justice. Individuals with non-documented status are increasingly less likely to report crimes or testify in court, especially amid a current climate where anti-immigrant rhetoric is increasingly common. Forty-four percent of Latino crime victims (not just undocumented immigrants) are already less likely to contact police fearing the interaction may result in inquiries into their status or that of people they know. An astounding seventy percent of undocumented immigrants are less likely to contact law enforcement authorities if they were victims of a crime. Common sense dictates that far fewer are willing to take the next step and take the stand to testify, especially if their immigration status is going to be broadcasted publicly in a public courtroom.

An individual’s country of origin has no bearing on whether they are suitable to take the stand. In order to ensure equal access and the fair administration of justice individuals from all backgrounds in our community must be able to come forward and play an integral role in the justice system. In order to promote equal access and participation, and the fair administration of justice, District Attorney Gascón implemented a court escort policy. The policy assigns victims’ advocates and district attorney investigators to escort any fearful undocumented witnesses or victims to the superior court house and the courtroom. In addition, the policy requires that staff notify a supervisor, and call the San Francisco Rapid Response Network if federal immigration agents are in the courthouse. Recognizing that local policy emphasizes courthouses as safe spaces was not enough, DISTRICT ATTORNEY Gascón simultaneously lead an effort to change the penal code SB 785, chaptered into law in 2018 now prohibits the disclosure of a person’s immigration status in open court.

Crime Strategies Unit (2014)

Efficient and Innovative Strategies

In 2014, District Attorney George Gascón established the Crime Strategies Unit (CSU) to incorporate the use of data and predictive analytics for strategic prosecution and crime prevention. CSU is a multi-disciplinary team of Neighborhood Prosecutors, analysts and investigators that uses a data-driven approach to resourcefully address the City's most pressing crime problems.

CSU's role is to make effective use of the vast amounts of information available from the thousands of cases prosecuted and investigated each year and to find innovative ways to make this information available throughout the Office, when and where it is needed the most.

Community Impact

Neighborhood Prosecutors work shoulder to shoulder with our law enforcement partners, neighborhood stakeholders, and the community to develop long lasting solutions to the City's major crime issues. They also work to build connections between the SFDA and community stakeholders, enhancing the accessibility of the criminal justice system, and strengthening the community's trust. Neighborhood Prosecutors spend the majority of their time out in the field looking for ways to promote public safety through meaningful community engagement and enforcement. Neighborhood Prosecutors also prosecute appropriate cases through the traditional court process and personally handle those cases that are of particular importance to the neighborhood they serve.

Crime Strategies Unit Mission:

To conceive, develop, and implement innovative strategies and programs that improve public safety through the efficient prevention, investigation, and prosecution of crime.

CSU successes include:

- Grand Jury indictment & prosecution Rainbow Crew, organized retail theft ring that stole tens of thousands of dollars' worth of merchandise across the Western U.S. (2016)
- Grand Jury indictment & prosecution of permanent vandalism of historic landmark Hibernia Bank (2016)
- Analytical support on San Francisco's first conviction of human trafficking of underage girls under Proposition 35, which created stricter human trafficking sentencing guidelines (2016)
- Operation Cold Day, largest take-down in ATF history, targeting organized illegal gun trafficking, drug trafficking, and serial auto thefts (2017)
- Addressed auto burglary hot spots in MTA parking lots using crime prevention through environmental design strategies (2018)
- Establishment of Gun Enforcement Unit, and successful federal application to enhance SFPD's Crime Gun Intelligence Center (CGIC) (2018)
- Launch of Regional Organized Retail Theft Task Force (ROC), with California Highway Patrol (2019)

Criminal Justice Data Improvement (2019)

California has long been a leader in criminal justice data collection, reporting, and transparency. For more than 60 years, the state has promoted the collection and dissemination of criminal justice data through a series of laws and regulations that have mandated detailed data collection for operational purposes, as well as broad access to policy makers and bona fide research organizations.

However, despite this long history of policymaking and investment in criminal justice data infrastructure, significant gaps still exist in the data that is collected both on persons involved in the criminal justice system and criminal processes, as well as in the accessibility of this data to policymakers and researchers. Accurate criminal records (or RAP sheets) are essential tools, used every day by all law enforcement agencies to advance public safety. They are also necessary to advance effective reforms like pretrial risk assessment, record clearance, and gun control. Accurate criminal justice records also support independent research and criminal justice policy development.

Recognizing that pervasive data gaps were undermining both the development and maintenance of California criminal justice reforms, as well as government accountability, transparency, and effectiveness, District Attorney Gascón co-sponsored Assembly Bill 1331 with Assembly member Rob Bonta in 2019.

AB 1331 improves the quality and accuracy of criminal records by mandating reporting of person- and case-level identifiers. Existing law requires criminal justice agencies and courts to compile records and data about criminal offenders and report this information to the Department of Justice for each arrest and case disposition. However, existing law does not require that these data points be transmitted with case- and person-level identifiers, creating challenges in compiling accurate criminal history records. Furthermore, AB 1331 ensures that researchers have access to more and better data, including criminal court records. AB 1331 prohibits researchers from being denied access to that information solely on the basis of a criminal record, except in specified circumstances, thereby ensuring that those directly impacted by the system can participate in its evaluation.

AB 1331 represents a long overdue and critical first step towards modernizing California's criminal justice data systems.

DA Stat: Data Driven Decision-Making (2013)

"We are committed to creating a modern system of justice that leans heavily on science and data, and that balances public safety with the best possible outcomes for victims, offenders, and our communities."

-District Attorney George Gascón

In May 2019, SFDA became the first District Attorney's Office in the state of California to share prosecutorial data and metrics with the public via the DA Stat Dashboards. In the digital age, the collection, reporting, analysis and transparency of data are central to good governance, and DA Stat reflects SFDA's commitment to public accountability and transparency.

District Attorney Gascón originally launched DA Stat as an internal performance measurement program in 2013, to measure success in achieving SFDA's goals, and to demonstrate the value of using data to ensure the fair and effective administration of justice. Since then, SFDA has become one of the most renowned data-driven prosecutors' offices in the United States.^{xiv} DA Stat is built on a commitment to data collection within the San Francisco District Attorney's Office, collaboration across local criminal justice agencies, and statistical analysis that generates meaningful operational metrics that inform internal policy development and resource allocation. The public version of the [tool](#), available on the SFDA web site, allows the public to explore metrics across the criminal process dating back to 2011.

Diversity Symposium (2012)

First launched in 2012, the Law Student Diversity Symposium is an annual event hosted by District Attorney Gascón. Students from local law schools and different backgrounds are invited to a panel presentation and networking reception empathizing the value and presence of diversity in the San Francisco District Attorney's Office.

Our pursuit for the fair and equal administration of justice is enhanced by the many staff and attorneys in our office who bring a wealth of perspectives, based on their collective, diverse backgrounds and interests, to their work. The SFDA emphasizes diversity in recruiting, promoting, retaining, and training.

In 2016 Stanford conducted a diversity study of all 58 District Attorneys' offices in the state. Stanford found that the San Francisco District Attorney's Office is the most diverse large county prosecutor's office in California. When including support staff, victim advocates and investigators, these figures would be even higher.

- 46.5% of our prosecutors are Black, Latino, Asian, and other non-white demographics.
 - Of the large counties, we have the largest proportion of Asians and Pacific Islanders at 18.6% of our prosecution staff.
 - We have the second largest proportion of black prosecutors at 12.4%, and the third largest proportion of Latino prosecutors making up 10.1% of the office's attorneys.
- Additionally, the SFDA office has the largest population of female prosecutors among large counties at 53.5%.
- Our management team is among the most diverse in the state.

The Law Student Diversity Symposiums have proven to be an amazing opportunity to meet law students interested in becoming prosecutors. It is also a unique opportunity to profile the experience and work of prosecutors currently working in the office. Each from diverse backgrounds, as they share their inspiring personal journeys with the San Francisco District Attorney's Office and the future lawyers in our community. Events like this help reinforce that diversity in our office is not only celebrated, but essential.

Eliminating Mass Incarceration: How San Francisco Did It (2016)

In 2016, James Austin, nationally renowned criminologist released a [report](#), detailing how San Francisco ended mass incarceration. Since 2009, California has reduced the size of number of people in prison, jail, felony probation and parole by nearly 150,000. At the same time, the state's crime rate has dramatically declined and is now lower than what was in 1960.

San Francisco City and County has been reducing its jail and prison populations at a pace that far exceeds the state and national rates. Its current jail and prison rate of incarceration is 279 per 100,000 population – less than 1/2th the rate for California and less than 1/3rd the national rate.

If the rest of the country could match San Francisco's rates, the number of individuals under correctional supervision would plummet from 7 million to 2 million. The nation's 2.3 million prison and jail populations would decline to below 700,000 and “mass incarceration” would be eliminated.

There are a number of recent reforms that have been implemented since 2009 that have allowed these reductions in San Francisco's correctional populations. The County took full advantage of two key legislative reforms (SB 678 and Realignment) and more recently Prop 47 to launch the following initiatives:

- San Francisco Reentry Council;
- California Risk Assessment Project;
- Community Corrections Partnership (CCP) and Community Corrections Partnership Executive Committee (CCPEC);
- San Francisco Sentencing Commission;
- Justice Re-investment Initiative;
- Probation Standardized Risk and Needs Assessment;
- Enhanced Services;
- Jail Re-entry Pod;
- Community Assessment and Services Center (CASC); and,
- A New Approach to Drug Offenses.

As declines in the correctional populations have been occurring in San Francisco, its crime rate has also been declining to historic low levels. Juvenile arrests have dropped by over 60%.

The Facility Dog Program (2016)

To Help Victims Mitigate Trauma

The Facility Dog Program promotes the goal of the Victim Services Division: “To help victims of crime mitigate the trauma, navigate the criminal justice system and rebuild their lives.” The program supports the work of the Victim Services Division by providing comfort and support to children and vulnerable adult victims during forensic interviews, exams, court and other legal proceedings.

Providing Calm in a Chaotic Legal System

Facility Dogs work in the legal system to provide victims a sense of calm, security and non-judgmental support during investigative and legal proceedings. When a traumatized person is stressed or re-traumatized, they can experience physiological responses out of their control. The brain’s own stress response system releases numerous transmitters, hormones such as cortisol and adrenaline, and other peptides that flood the body in stressful situations. This reaction can impair the body’s normal coping and functioning mechanisms, include the ability to recall, recount or relay information.

Proven Positive Impact

Numerous studies have documented the positive impact of victims’ interaction with Facility Dogs to their physical and emotional health, including short term decreases in blood pressure and heart rate, positive effects on social communication, reductions of feelings of loneliness and isolation, and improvements in depression and self-esteem. Facility dogs can also assist in decreasing anxiety and fear for victims engaged in interview, exam and legal proceedings.

Pink and Red will be partnered with Handlers

Pink and Red must be partnered with working professionals in the legal field with adequate training in behavior, canine care and health, local access and public access laws. The Chief and Deputy Chief of Victim Services, Advocates from Child Abuse and Sexual Assault, Forensic Interviewers from the Child Advocacy Center, and a team of SFDA Advocates are trained to handle Pink and Red.

Fines and Fees Taskforce (2016)

District Attorney Gascón has long held the view that there are times when the best move government can make is stopping a harmful action or not being a barrier to a good policy. Reducing and eliminating fees does not reduce consequences, it reduces barriers to reentry. When we reduce financial barriers, we increase a person's ability to secure employment, a job, healthcare and a place to live, facilitating successful reentry as well as victim restitution payments.

Convened in October 2016, the San Francisco Fines and Fees Task Force, of which SFDA was an active participant, chose to focus on the elimination of criminal justice fines and fees charged to people exiting the system. The initial focus on "ability to pay" later shifted to address the question, "What are they paying for?" and "Are there instances where we (the system) can stop assessing fines and fees?"

In collaboration with the Financial Justice Project, Public Defender, Sheriff, Adult Probation, Juvenile Probation and Superior Court, the Task Force eliminated 10 county-controlled fees assessed by the Superior Court. SFDA drafted and signed the petition to the Superior Court which lifted more than \$32.7 million in debt from unpaid criminal justice administrative fees for 21,000 people.

Health and Recovery of California Victims (2015)

Endorsed by District Attorney Gascón and authored by Senator Loni Hancock, the Health and Recovery of California Victims Act (SB 519) makes treatment and services more accessible to traumatized victims of crime.

Cycle of Victimization

Research supports the idea that today's victims can become tomorrow's offenders. Studies have found victimization and delinquency largely overlap, with most victims engaging in delinquency and most delinquents being victimized at some point in their lives (Lauritsen, Laub, and Sampson, 1992; Lauritsen, Sampson, and Laub, 1991; Singer, 1986). It is imperative victims have the resources to heal in a timely manner after they experience trauma.

Removing Barriers to Recovery

For victims of crime, SB 519 streamlines counseling and financial support from the Victims Compensation and Government Claims Board (VCGCB):

- Victims of crime now have access to mental health counseling regardless of their probation status
- Witnesses, who are minors and victims of crime, can receive compensation whether they assist law enforcement or not
- A victim no longer has to submit documents from the Internal Revenue Service (IRS), Franchise Tax Board (FTB), Board of Equalization (BOE), Social Security Administration (SSA), or Employment Development Department (EDD) in order to be eligible for compensation
- Adult witnesses to a crime now have access to Victim of Crime counseling
- Elderly victims of financial crimes are now entitled to Victim of Crime counseling
- Victims can receive more money for funeral expenses and relocation
- Any appeals concerning reimbursement applications must now be processed within 90 days
- Letters from the VCGCB to victims who apply for compensation must be translated into English, Spanish, and Chinese (if requested/necessary)

Human Trafficking Unit—Victim Services (2014)

Comprehensive Trauma-Informed Services

The SFDA's Victim Services Division provides comprehensive trauma-informed services to victim and survivors of human trafficking, including sex and labor trafficking and commercially sexually exploited children (CSEC).

As part of the prosecution team, advocates collaborate with local law enforcement agencies and city task force members to deliver effective victim-centered services.

Victim Advocacy

- Provide emotional support to victims, survivors, witnesses, and family members
- Disseminate information about services and resources for victims, including health, mental health, dental, and relocation services at the time of crisis or after the event
- Provide “Go Bags” with essential items, including a cell phone, journal, clothing, toiletries, blanket, and reading material
- Support law enforcement operations, and provide assistance during hospital visits and in conducting multi-disciplinary interviews
- Emergency assistance with resources for shelter, food, clothing, and medication

Orientation to the criminal justice system:

- Information on victims' rights under Marsy's Law
- Support during, and accompaniment to, court hearings
- Assistance with victim impact statements
- Guidance on completing restitution requests

Red and Pink: Members of the Human Trafficking Team

Pink and Red, the Victim Service's dogs, are also members of the Human Trafficking Unit. They accompany victims as they navigate the criminal justice system.



California Victims Crime Compensation (CalVCB)

- Assist victims complete and submit the California Crime Compensation Application

Our goal is to help survivors of human trafficking feel safe, supported, and heard. We provide emergency and long-term support resources.

Immigration Relief (2017)

Relief from Deportation for Justice Involved Non-Citizens

Following a new legal process beginning in 2017, the San Francisco District Attorney's Office has been working diligently to keep hard-working and contributing non-citizen members of our community, and their families, from sudden deportation. Starting in 2017, the California Legislature incorporated a new legal process for criminal defendants to legally change their pleas to other related charges to avoid the collateral federal immigration consequences associated with their original pleas. A defendant who can establish that some error occurred during their earlier plea, which interfered with their ability to meaningfully understand the actual or potential immigration consequences of their guilty plea, may be entitled to relief within a single court appearance. Prior to this new enactment, the same result could take weeks to decide.

Special Prosecutor to Oversee "Immigration Relief Calendar"

The SFDA's Office appointed a 40-year veteran prosecutor to proactively manage the office's new "immigration relief calendar." This Special Assistant District Attorney, returning to the office from retirement, applies concepts of both law and equity to his work. He considers a variety of factors to determine which motions for relief should and should not be opposed under the new statutory framework (Penal Code section 1473.7):

- The period of time the individual has been free of crime since their original plea
- The nature of the original charges
- Family status of the individual
- Work and community ties of the individual
- Imminence of the individual's federal immigration deportation/removal threat
- Simplified (but still legally acceptable) proof of prejudicial error in the original plea

Proactively Facilitating Immigration Relief

Additionally, the SFDA's Office has developed templates to assist defense counsel file successful motions for relief and to help accommodate defendants in federal immigration custody who are unable to personally appear for their new "immigration safe" pleas. The office has also worked to streamline administrative procedures for court personnel. As a result of SFDA's frequent collaboration with the San Francisco Public Defender's Office, other Bay Area Public Defender's Offices, and private immigration specialist counsel from all over California, many more suitable individuals under the streamlined framework have avoided sudden or random deportation. Their U.S. citizen family members (spouses, children, parents) no longer have to fear separation or the loss of financial support from their breadwinner, and the greater community can continue to receive the contributions these long-crime-free community members offer (such as taxes paid, jobs created for those they employ, and civic or religious volunteer efforts).

Implicit Bias Training and Workgroup (2016)

Implicit Bias Training

Beginning in August 2016, District Attorney Gascón arranged the first of two opportunities for all office staff and employees to attend a mandatory training on implicit bias led by an expert in the field, Kimberly Papillon. Ms. Papillon presented on emerging neuroscience and academic studies showing that bias can, and does, operate within each of us at an unconscious level. Members of the office were led through interactive exercises to show that visual markers—race, age, class, perceived sexual orientation, and gender, among others—can trigger internal processes in our brains to create positive emotions for some groups, and negative or no emotions at all for others.

The training was widely attended, with numerous members of the office attending multiple times, and prompted further discussion and efforts within our office.

Implicit Bias Workgroup

Following the office-wide training, a collection of attorneys and staff from across the office formed an Implicit Bias Workgroup. The workgroup discussed methods for advancing the dialogue around the impact of implicit bias on the work of the office.

Important areas of discussion included ways to continue educating the office about implicit bias, strategies for identifying our own biases, and Effective to tools at our disposal to combat implicit biases. Following the discussion, the workgroup disseminated office-wide emails with information about trainings held by other offices. It also raised awareness about opportunities to attend conferences on the issue. The workgroup and District Attorney Gascón also created a department-wide competition, the Implicit Bias Challenge, to encourage members within the office to think critically about the role of implicit bias in their work.

Implicit Bias Challenge (2017)

What is Implicit Bias?

According to the Stanford Encyclopedia of Philosophy, “implicit bias” is “a term of art referring to relatively unconscious and automatic features of prejudiced judgment and social behavior.”

Psychologists in the field identify the most striking and well-known research has focused on implicit attitudes toward members of socially stigmatized groups, such as African-Americans and the LGBTQ community.

What is the Implicit Bias Challenge?

In 2017, the San Francisco District Attorney’s Office initiated the office’s first Implicit Bias Challenge. The challenge instructed teams within the office to think critically about implicit bias in the work of a prosecutor’s office and use art to deconstruct negative cultural and social stereotypes. Entries included a sensory display about physically peeling away biases, photos of inmates showcasing their humanity, and a stunning display of community members collectively creating art.

Why the Implicit Bias Challenge?

During an office-wide training initiated by District Attorney George Gascón, an expert presented neuroscience research on how visual markers—for example, race, age, class, perceived sexual orientation, and/or gender—may automatically trigger your brain’s internal processes to assume certain emotions or beliefs. These emotions or beliefs could affect whether we exhibit care or cruelty, or show empathy or apathy towards specific people.

District Attorney Gascón recognized the potential impact of implicit bias in the work carried out by the San Francisco District Attorney’s Office and on the communities we serve. Subsequently, Gascón arranged for a second training to ensure everyone in the office had the opportunity to attend. He then formed an office-wide implicit bias workgroup to discuss the next steps in addressing implicit bias within the office. As a result, the workgroup created the idea for the challenge: to use art in order to identify unconscious biases and thoughtfully reframe them.

The Implicit Bias Challenge Art Showcase

In celebration of the exceptional work by office employees, artists, and community members, the San Francisco District Attorney’s Office held its first Implicit Bias Challenge Art Showcase at the beautiful 111 Minna Gallery. The event provided a space for community members and office employees to engage in the important dialogue around implicit bias. [Click here for gallery photos.](#)

Independent Investigations Bureau (2016)

The San Francisco District Attorney's Office officially established its Independent Investigations Bureau (IIB) on December 19, 2016, with the mission of promoting "Equal Justice Under Law."

IIB is committed to ensuring law enforcement accountability by conducting independent investigations, and where warranted, criminally prosecuting officers who violate the law. Historically, the San Francisco Police Department (SFPD) has been the lead investigator of officer misconduct, including officer-involved shootings. The office is currently in discussions with SFPD on a new memorandum of understanding (MOU) to ensure the fair and independent review of these critical cases.

3 Main Responsibilities:

1. Review all unlawful use of force allegations, including officer-involved shootings.
2. Review all in-custody deaths.
3. Safeguard the integrity of the criminal justice system via a conviction review process focused on assessing and remedying colorable claims of innocence.

In 2015, San Francisco ranked 8th in fatal officer-involved shootings of the 60 largest cities in the United States.

As of October 2019, there hasn't been a single fatal OIS in over 570 days.

The IIB Team

IIB conducts its investigations independent of the rest of the San Francisco District Attorney's Office. Accordingly, IIB is housed separately from all law enforcement, has dedicated funding to protect it from being subsumed by other work of the office, does not handle criminal prosecutions apart from its designated duties, and provides a copy of its complete investigative file to both the US Department of Justice's Civil Rights Division and the California Attorney General's Office for their review and consideration.

Justice Dashboard (2019)

The [Justice Dashboard](#) is a tool for assessing the City & County of San Francisco's progress toward reducing racial disparities in the criminal justice system. It provides information regarding criminal justice outcomes to improve San Francisco's ability to make data-driven sentencing and supervision policies.

The **Justice Dashboard** measures subsequent contact rates at the point of **arrest**, **arraignment**, and **conviction** (three years post-conviction) for all adults convicted of a felony or misdemeanor and sentenced to county jail or local supervision in San Francisco. This data sharing and visualization project was developed by San Francisco District Attorney George Gascón through the [San Francisco Sentencing Commission](#) in collaboration with the [Sheriff's Department](#) and the [California Policy Lab](#). The Justice Dashboard was created in part with support from the **John D. and Catherine T. MacArthur Foundation** as a part of the [Safety and Justice Challenge](#), which seeks to reduce over-incarceration by changing the way America thinks about and uses jails.

Throughout his tenure as District Attorney of San Francisco, George Gascón has embraced data, technology, and research with the belief that these tools can reduce both incarceration and racial disparities, as well as identify effective interventions for individuals involved in the system and for public safety more broadly. Tools like [DA Stat](#) and the Justice Dashboard enhance our ability to ensure safer communities and advance the national dialogue on best practices for local justice systems. For the first time in San Francisco, the Justice Dashboard provides decisionmakers with accurate recidivism statistics that can drive policies that meaningfully reduce reliance on jail, and reduce crime and victimization.

Measuring for Success

The Justice Dashboard reviews subsequent criminal justice contact at three distinct decision-making points for three years post-conviction: arrest, arraignment, and conviction. By measuring subsequent criminal justice contacts in this way, the Dashboard provides an expansive view of how the local criminal justice system interacts with individuals in San Francisco that goes beyond more limited definitions of recidivism. Subsequent contact rates are measured for anyone over the age of 18 convicted of a felony or misdemeanor and sentenced locally in calendar years 2013, 2014, and 2015 in San Francisco. Additional cohorts will be added each year. Due to data unavailability, only contacts within San Francisco are included, and the Dashboard excludes individuals sentenced to state prison.

Recidivism is a familiar measure of a correctional system's performance, but it is not the only metric worth evaluating. Using recidivism as the sole measure focuses the conversation on negative outcomes instead of positive ones. In its next phase, the Justice Dashboard will incorporate a desistance framework, which views reduction in criminal activity as a complex process that often requires significant time for individuals, and systems, to change. Unlike recidivism, which is a binary measure of success or failure, desistance allows for degrees of success. To foster the shift to a desistance framework, the Sentencing Commission will also explore the extent to which positive outcomes external to the justice system can be measured (for example, social integration, economic security, secure housing, and improved health).

Law Enforcement Assisted Diversion—LEAD SF (2017)

Law Enforcement Assisted Diversion (LEAD)

LEAD SF is an innovative pre-arrest diversion program that refers repeat, low-level drug offenders, at the earliest contact with law enforcement, to community-based health and social services as an alternative to jail and prosecution. San Francisco's LEAD program focuses on the Tenderloin and Mission districts where a significant percentage of the City's drug incidents occur.

In August 2017, the City received a 26-month grant award from the Board of State and Community Corrections to implement LEAD SF as a multi-agency collaborative project. It is overseen by a Policy Committee composed of partner agency representatives and co-chaired by District Attorney George Gascón, Chief of Police William Scott, and Director of the Department of Public Health, Barbara Garcia.

Mission of LEAD SF

The goal of LEAD SF is to better meet the needs of individuals with a history of substance abuse and low level drug offenses by:

- Improving health and housing status of participants
- Reducing the recidivism rate for low-level drug and alcohol offenders
- Strengthening collaboration with city and community-based partners

How does LEAD SF Work?

Rather than being arrested, LEAD SF diverts eligible participants at the point of contact with law enforcement into the City's expansive network of harm reduction-based rehabilitation services, including behavioral health services (substance use disorder and mental health treatment), physical health services, transitional housing, employment, and other relevant services.

Years in the Making: The SFDA's Office, the Sentencing Commission, and LEAD SF

In 2011, the Sentencing Commission of the City and County of San Francisco (SFSC), an initiative of the San Francisco District Attorney's Office, began a four-year process to study the design and implementation of a formalized, non-punitive law enforcement-assisted pre-arrest diversion program for low-level drug offenders.

During the same time, the SFSC also assessed the feasibility of replicating the LEAD program (based on a model implemented in Seattle) in San Francisco.

An analysis completed for the SFSC explored the feasibility, benefits, and cost of implementing LEAD and found that, "San Francisco has the necessary tools and systems to meet the challenge of successfully implementing such a program." The SFSC concluded its study in July 2015, echoing the researchers' recommendation that San Francisco implement LEAD as "an evidence-based and fiscally prudent approach to lowering recidivism and increasing public safety."

Later, the Workgroup to Re-envision the Jail Replacement Project also recommended implementing LEAD on a pilot basis in the Tenderloin and Mission neighborhoods.

Marijuana Conviction Relief (2018)

“We want to address the wrongs that were caused by the failures of the war on drugs for many years in this country, and begin to fix the harm that was done not only to the entire nation, but specifically to communities of color.”

- District Attorney George Gascón

On January 31, 2018, District Attorney George Gascón declared that he would proactively provide conviction relief to thousands of individuals with San Francisco marijuana convictions, dating as far back as 1975. He took this step to level the playing field for those convicted before marijuana legalization, by reducing barriers to housing and employment. District Attorney Gascón contemplated this relief would be completed with existing resources.

This proactive marijuana conviction relief policy, the first in the nation, negates the need for those eligible to be made aware of the opportunity and retain a lawyer to file the necessary paperwork. Many of those affected lack the resources required to change their criminal record on their own. Researchers estimate that only 3% of eligible individuals in California have applied for relief under Proposition 64, which legalized the possession and recreational use of marijuana for adults.

Leveling the Playing Field with Technology

Through a pilot program with the San Francisco District Attorney’s Office, Code for America created technology that automatically clears eligible Prop 64 convictions, providing people with a real second chance. SFDA is the first jurisdiction to partner with Code for America on this new approach to criminal record expungement.

Traditionally, determining eligibility for conviction relief and filing motions to expunge, dismiss, or reclassify convictions has been a manual, paper-based, and resource intensive process that requires significant time for Prosecutors’ Offices to complete. For example, we estimate that just the first step of the Prop 64 felony conviction review process – pulling the RAP sheets – will take up to 400 hours, or 10 weeks of full-time effort. That does not include the subsequent time required for attorneys to review the RAP sheets for eligibility and complete, approve, and file the motions with the Superior Court.

Through this partnership with Code for America, we are developing a cost-effective tool that expedites, streamlines, and automates the process in order to:

- Automatically and securely determine eligibility for record clearance under state law
- Automatically generate a completed and signed motion that may be electronically filed

What is Code for America?

Code for America is using principles and practices of the digital age to transform the way government delivers services to those most impacted by the criminal justice system. The benefits of an automated criminal record clearance process include increased access to employment, housing, and student loans and a significant decrease in recidivism for those impacted by prior marijuana convictions. A 2017 study of East Bay Community Law Center’s clients showed that record clearance increased an individual’s average earnings by 33%.

Make It Right (2014)

Make it Right: A New Approach to Juvenile Delinquency in San Francisco

In San Francisco, by many measures, data points to a juvenile justice system that is heading in the right direction. From 1999 to 2016, we experienced a 76% decline in referrals of youths to the juvenile justice system, with 50% of that decline occurring in the last seven years. This includes an 85% decline in detentions, leading to a reduction in the juvenile hall average daily population from 119 to 45 young people. It also includes an 83% decline in kids on probation, and a 100% decline in kids sent to California Youth Authority/Department of Juvenile Justice. But these reductions, while significant, leave us with hard challenges. As we have turned to community-based solutions for lower level offenses, the cases that have remained in our courtrooms are more serious. And as the overall numbers have declined, racial and ethnic disparities in our juvenile justice system have become even more extreme. In 1999, African American young people comprised 49% of referrals and 52% of detentions – already a grossly disproportionate amount in a time when they comprised 13% of the city’s population. In 2016, they comprised an even more alarming 59% of referrals and 67% of detentions when only making up 6% of our population.

In this context, District Attorney Gascón has partnered with juvenile justice system stakeholders to launch Make it Right, a restorative justice approach for youths ages 13-17 facing prosecution for an array of felony charges in San Francisco.

Restorative Community Conferencing

Through Make it Right, eligible young people are given the option, before their cases are charged, to participate in “restorative community conferencing”. In this process, the youth comes together with their victim, each with their supporters (including family/caregivers, youth services, schools, coaches, and others) in a community-based facilitated dialogue to develop a plan for the young person to repair harm, address root causes, and make amends. This “agreement”, developed collectively, identifies concrete actions that the youth will take to address harm caused to the victim, the community, the youth’s family, and him/herself. The young person has a six-month period in which to follow through on their agreement with support from a community-based case manager. If successful, the case is not prosecuted.

Public Private Partnership

Make it Right is operated as a collaboration between the SFDA and two organizations which bring unique expertise to the program: Community Works West, which facilitates the conferences, and Huckleberry Youth Programs, which leverages its extensive knowledge of community-based resources to support the youths as they fulfill their agreements. The Restorative Justice Project at Impact Justice, a national innovation and research center, partnered with the SFDA to launch Make it Right, and provides ongoing technical assistance to the team. Make it Right's operation is made possible through funding from the San Francisco Department of Children, Youth and Their Families and the Zellerbach Family Foundation.

Effectiveness

In order for Make it Right to be a model that provides a meaningful alternative to the traditional juvenile justice system, restorative practices must be evaluated in a deliberate, statistically sound way. Preliminary results indicate that Make it Right significantly reduces recidivism; formal evaluation currently is being conducted by California Policy Lab.

Mass Casualty Critical Response Team (2015)

Background

In 2015, the SFDA Victim Services Division set out to create a plan for deploying and utilizing the resources of our division in the event of a mass casualty, active shooter or terrorist event. In our role, we bring resources to victims, their loved ones, and witnesses of violent events.

The Victim Services Mass Casualty Critical Response Team, comprised of trained and multilingual advocates are deployed by request from the Department of Emergency Management, Department of Public Health, San Francisco International Airport, Department of Human Services, or Law Enforcement. The Unit works with other San Francisco Departments and Agencies to fill gaps in victim support following mass casualty incidents. The goal is to provide a unified response for victims of mass violence for both the immediate, short-term and long-term trauma they will face.

Our unit provides the following services in response to mass crime:

- Assists with tracking of loved ones/missing persons
- Assists with staffing Family Assistance Center
- Provides immediate and short-term emotional support to victims, survivors, witnesses, and loved ones
- Provides information about services and resources for victims
- Connects those affected by the event to resources for immediate, short-term, and long-term recovery.
- Provides criminal justice system support by assisting victims during trials, helping organize memorial events, providing updates on court proceedings, etc.
- Assists with completing crime victim compensation applications

Victim Service Dogs

Pink and Red, the Victim Service's court dogs, are also members of the Critical Response Team. They will accompany victims as they navigate the criminal justice system.

Bay Area Mass Casualty Planning Committee

The Victim Services' Directors/Coordinators from the nine Bay Area Counties -San Mateo, Santa Clara, Marin, Sonoma, Contra Costa, Alameda, San Francisco and Napa - have been convening to share information about planning, preparing for and responding to mass casualty crime events. The goals of the Bay Area Mass Crime Victim Casualty Planning Committee include:

- Each county develops a department and county deployment plan
- Develop a Bay Area response and mutual aid plan
- Develop a memorandum of understanding between counties
- Share trainings

Misdemeanor Behavioral Health Court (2015)

For over fifteen years, San Francisco's Behavioral Health Court (BHC) has served as a model for working with individuals with serious mental illness who are charged with serious, often violent felony offenses. However, the intense and lengthy BHC model is not well-suited to limited legal exposure of individuals facing prosecution for less serious offenses—but who also may need treatment for serious mental illness.

In 2015, San Francisco's justice partner agencies – including the District Attorney, Sheriff, Public Defender, and Court joined forces with UCSF Citywide Forensic Case Management, Westside Community Services and SF Pretrial Diversion to create Misdemeanor Behavioral Health Court—a new program calibrated to the exposure individuals face in misdemeanor cases. Through MBHC, participants receive services from clinicians and case managers with expertise in engaging and serving justice-involved clients. The model is augmented by specialized supportive housing for MBHC clients—which provides participants with both an incentive to participate and the stabilization needed to succeed.

While the individuals participating in MBHC are charged with misdemeanor offenses, they often have lengthy histories of both justice system involvement and psychiatric hospitalization. In the first two years of operation, almost half of the MBHC participants had a history of frequent law enforcement contact, and 78% of MBHC participants had a history of psychiatric hospitalization, with an average of 3.8 hospitalizations in the 12 months prior to program enrollment.

Early results of MCHB have demonstrated the importance and value of this program. In the first two years of operation, the program produced 17 program graduates. 100% left the program engaged in ongoing treatment, stably housed, and linked to disability benefits, and none returned to SF County Jail.

Mitigating Bias in Charging Policy & Platform (2019)

The San Francisco District Attorney's Office (SFDA) recognizes that the fair and equal administration of justice requires identifying and tackling racial disparities of all kinds within the criminal justice system, from policing to pre-trial detention to prosecution to probation or parole. Race, whether conscious or unconscious, affects every discretionary point in the criminal justice system. Any policy can result in racially disparate and disproportionate outcomes. In order to mitigate and eliminate the impact of bias on prosecutor charging decisions, District Attorney Gascón implemented a bias mitigation charging policy and platform in 2019.

The policy requires that prosecutors engaged in charging cases commence their work by reviewing the Prosecutor Implicit Bias Card, adapted from a tool developed by the Minnesota Judicial Branch:

Act Consciously and Deliberately

- Allow more time for cases in which implicit bias may be a concern.
- Avoid decisions under rushed, stressed, distracted or pressured circumstances.
- Engage in thoughtful information processing - objectively and deliberately consider the facts at hand. Avoid low-effort decisions or decision made on auto-pilot.
- Take special care in situations when you must respond quickly to avoid making snap decisions.
- Articulate the reasoning behind your decision before committing to a decision to allow yourself to critically review your decision-making process.

Be Self-Aware

- Analyze your emotional state. Do the negative or positive emotions you are feeling pertain to the case?
- Consider whether you are requiring more or less from a person than you would from others.
- Be mindful of your decision-making process, not just the resulting decision.

Create Processes to Serve as a Check on Unintended Bias

- Take notes and rely on those notes over memory.
- Consider what evidence supports the conclusions you have drawn and how you have challenged unsupported assumptions.
- Seek feedback from others. Would others perceive or handle the situation differently?
- Track your decisions and periodically examine them for any pattern of bias.

The policy is supported by a new open-source program developed in collaboration with the Stanford Computation Policy Lab, that uses artificial intelligence to diminish implicit bias in prosecutorial charging decisions. The Bias Mitigation Platform, which was developed at no cost, ingests police incident report data and automatically eliminates race information, and other details that can serve as a proxy for race, in order to ensure prosecutors' charging decisions are not influenced by implicit biases.

Neighborhood Courts (2012)

In 2012, District Attorney Gascón launched Neighborhood Courts, an innovative model for keeping adults facing prosecution for low-level offenses from entering the criminal justice system. The program is designed to resolve cases efficiently, create community-driven solutions to crime, preserve our courts for serious crimes, and reduce recidivism.

- Recipient of the Innovation in Criminal Justice Award by the US DOJ/ Bureau of Justice
- Over 4,000 cases heard since Neighborhood Court was created
- 93% of participants appearance rate
- 95% successful resolution
- 78 grants provided back to the community through the Neighborhood Justice Fund
- Over 130 community members have served as volunteer adjudicators

Community Involvement and Participant Accountability

Non-violent misdemeanor cases that would otherwise be prosecuted are diverted pre-charging by the SFDA into ten Neighborhood Courts across the City (one for each police district), where trained neighborhood volunteers adjudicators hear the matters, speak with the participants (e.g. defendants under traditional prosecution) about the harm caused by their actions, and issue “directives” designed to repair that harm and address risk factors. Participation in Neighborhood Court is voluntary – but participants must be willing to take accountability for their actions. Once the participant completes their directives, the case is discharged. Cases that do not resolve in Neighborhood Court are returned to the SFDA for prosecution.

Innovation in Criminal Justice

1. Efficient. Cases can be heard within a couple of weeks and fully completed before the case would even appear in criminal court
2. Community-driven solutions. The community that is affected by the crime and the responsible individual are empowered to resolve the matter by addressing the harm that was caused by the act.
3. Justice reinvestment. By taking low-level cases out of our overburdened courtrooms, we can reserve justice system resources for the cases that need traditional prosecution – and reinvest resulting savings in prevention and services. A 2018 study found that Neighborhood Court costs up to 82% less than prosecution. Moreover, through our Neighborhood Justice Fund initiative, payments made by participants into a “community restitution” fund are redirected into grants to nonprofit organizations across the City.
4. Recidivism reduction. By keeping individuals facing low-level charges out of the traditional system, and, in the process, keeping convictions off their records, the Neighborhood Courts removes an obstacle to meaningful participation in the community. As individuals gain an understanding of the impacts of their actions, they may be less likely to reoffend. Principles of procedural justice, core to the operation of Neighborhood Courts, also help to promote successful completion of the program.

A Recognized Model

Neighborhood Courts was identified as a 2015 Innovation in Criminal Justice by the United States Department of Justice/Bureau of Justice Assistance, Association of Prosecuting Attorneys and Center for Court Innovation. The model has been replicated in Los Angeles and Yolo Counties, is currently undergoing implementation in Santa Cruz and Contra Costa Counties, and has garnered interest from jurisdictions across the country. In 2019, the RAND Corporation launched a three-year comprehensive evaluation of Neighborhood Courts, funded by the National Institute of Justice.

Neighborhood Adjudicators: Who are they?

Adjudicators are members of San Francisco's diverse neighborhoods who volunteer to hear the cases. They have been trained in restorative justice and problem solving. They are NOT defense attorneys, prosecutors, or judges. They include residents, merchants, students, parents and retired community members. During Neighborhood Courts sessions, adjudicators hear from the participant and the victim (in cases where there is a victim), and discuss the impact of the incident on the community. Our community-based partners, San Francisco Pretrial Diversion and Community Boards, provide ongoing training and support to our adjudicators, helping them to infuse restorative principles into the sessions and to craft individualized directives in each case.

Preventing High School Truancy: School-based Case Managers (2012)

In 2012, District Attorney Gascón set out to increase successful transitions to high school for San Francisco the students most likely to drop out of school. Data has shown that kids are most likely to disengage from their education at significant school transitions – primarily in from fifth to sixth grade (when they move to middle school), and then eighth to ninth grade (when they move to high school).

The transition to ninth grade is a particularly critical time – and one in which time is of the essence. Unfortunately, most supports for students aren't activated until a student has already started to struggle. The DA's concept was to provide these students with added support on their way in to the school year – before they started to skip school and fall behind.

In 2012-2013 the District Attorney's Office funded an on-site truancy case manager at Burton High School as a pilot program. We worked with Urban Services YMCA, which runs the City's Truancy Assessment and Resource Center, develop the program. Students are identified based on SFUSD's Early Warning Indicator (EWI) list, which identifies kids who, due to attendance and performance, are unlikely to successfully transition to high school. Rather than wait for kids to start failing, these case managers reach out to EWI kids before they start to exhibit truancy and school failure. In the current school year, the case managers are working actively with 36 students across the two schools. The schools also look to these staff to provide a number of other critical supports, including participating in weekly school team meetings, providing general support to other students, and facilitating parent/student workshops on attendance awareness.

In 2013-14 we funded positions at both Burton and Ida B. Wells Continuation High School (after the principal at Wells reached out to ask us for help). Since the 2014-2015 school year, the Department of Children, Youth and Their Families has continued to fund these two positions at \$130,000 annually. We have seen amazing examples of transformation for kids who entered high school feeling disengaged and behind. We also have received requests from other schools for such a position and have advocated for replication of the program in our San Francisco High Schools.

Proposition 36—Changes in the “Three Strikes” Law (2012)

In 2012 District Attorney Gascón endorsed Prop 36 to revise California’s unfair, disproportionate, and counterproductive “three strikes” sentencing law. Proposition 36 was drafted by some of the most prominent leaders and advocates in the legal profession, including Stanford Law professors, NAACP Legal Defense Fund lawyers, and some of the toughest and most respected law enforcement officers. In November 2012, California voters passed Prop 36, eliminating unnecessary, harsh, and ineffective life sentences for minor nonviolent crimes.

Reduces Overcrowding Safely and Creates More Room in Prison for Dangerous Felons

- As of 2014, over 1,600 prisoners have been released from custody under Prop 36
- The recidivism rate of prisoners released under Prop 36 is 1.3 percent.

Removes Unfair and Disproportionate Life Sentences

- A life sentence cannot be imposed for nonviolent, non-serious crimes, unless a special situation exists. These situations are limited and only include:
 - the new felony conviction is for a serious or violent crime
 - the new conviction is for certain sex or drug offenses or involves a firearm,
 - or an offender’s prior strikes are for rape, murder, or child molestation
- Non-violent “three strikes” inmates can petition for a shorter sentence, pending a determination by the court that the inmate is no longer a risk to society.
- Offenders who commit repeat low-level offenses are still sentenced to twice the ordinary sentence, but not to life.

Prop 36 is a Money-Saver

- According to the most recent [Stanford Law Study of 2014](#), “Proposition 36 has already saved California over \$30 million dollars in prison costs and has freed up valuable prison space for more dangerous criminals.”
- According to the same study, Proposition 36 is projected to save taxpayers over \$750 million over the next 10 years.

Proposition 47—The Safe Neighborhoods and Schools Act (2014)

What is Prop 47?

On November 4th, 2014, California voters passed the Safe Neighborhoods and Schools Act, also known as Prop 47, with about 60% of the vote.

Prop 47 reclassifies certain low-level, non-violent crimes from possible felonies to misdemeanors:

- Simple drug possession
- Petty theft under \$950
- Shoplifting under \$950
- Forgery under \$950

Individuals serving (or who have already served) sentences for crimes that were felonies, but are now misdemeanors under Prop 47, can request for resentencing and record expungement (they can have their felony record erased). Also, the Act requires that all savings generated from a decrease in the statewide prison population as a result of Prop 47 must be used for criminal justice reinvestment efforts.

Prop 47 is Working

- Prop 47 has led to a reduction in California's inmate population
 - 13,000 fewer prisoners in jails and prisons.
 - 9,000 less people in jail across the state.
 - 9% less people in jail across the state.
- Prop 47 has had major financial savings for justice reinvestment
 - \$100 Million in savings for justice reinvestment (more counselors, therapy, housing assistance, and job opportunities for those released from prison)
 - 32 beds for people with drug abuse problems in San Francisco
- Recidivism among those released under Prop 47 is low
 - <5% recidivism rate (as of 2015)
- Prop 47 has reduced racial disparities in California jails and prisons
 - 2.2% decrease between 2010 and 2015, the percent of prime-age African American males institutionalized went from 9.6% to 7.4%. The decline observed for African American males was six times that observed for white males

Public Safety Assessment—PSA (2016)

In 2016, District Attorney Gascón facilitated the adoption of the Public Safety Assessment, a validated pretrial risk assessment tool, in San Francisco.

The PSA

The PSA is an objective, research-based pretrial risk-assessment tool, designed by the Laura and John Arnold Foundation (LJAF), that measures risk factors to assist judges in making release/detention determinations. The SF Pretrial Diversion Project (SFPDP) completes a PSA on every person booked into SF County jail on a new felony or non-cited misdemeanor.

The PSA measures three types of risks during the pretrial stage: the likelihood that a defendant will commit a new crime, the likelihood that a defendant will commit a new violent crime, and the likelihood that a defendant will fail to return to court.

Predicting Risk

The PSA relies on risk factors, which are characteristics that, when present, indicate a statistically significant increased risk of pretrial failure. By analyzing data from over 1.5 million cases drawn from more than 300 jurisdictions across the US, LJAF found that the following criminal history risk factors are the strongest predictors of failure to appear and new criminal activity:

- 1) Whether the current offense is violent
- 2) Whether the person has a pending charge at the time of arrest
- 3) Whether the person has a prior misdemeanor conviction
- 4) Whether the person has a prior felony conviction
- 5) Whether the person has a prior conviction for a violent crime
- 6) The person's age at the time of arrest
- 7) Whether the person failed to appear at a pretrial hearing
- 8) Whether the person has previously been sentenced to incarceration

Risk Management

The PSA tool is the foundation of a new risk-based pretrial supervision model for San Francisco. Based on the three scores generated by the PSA—failure to appear (FTA), new criminal activity (NCA), and new violent criminal activity (NVCA)—the SF Pretrial Diversion Project applies a Decision Making Framework, resulting in recommendations that detain the highest risk defendants (when possible), release moderate risk defendants with interventions and services targeted to mitigate risk, and release low risk defendants with minimal or no conditions.

Racial Disparity Study (2017)

“An Analysis of Racial and Ethnic Disparities in Case Dispositions and Sentencing Outcomes for Criminal Cases Presented to and Processed by the Office of the San Francisco District Attorney” (Raphael, MacDonald, 2017)

Summary of Findings

Through an analysis of cases presented to the San Francisco District Attorney’s Office for prosecution between 2008 and mid-2016, researchers found that racial and ethnic disparities in case outcomes tend to disfavor African Americans, Asians, and Hispanics relative to White suspects arrested in San Francisco. However, for the most part, these disparities are driven by characteristics determined prior to the District Attorney’s handling of the case. Significantly, the passage and implementation of California Proposition 47 in November of 2014 narrowed racial disparities for nearly all the outcomes measured.

Across six out of seven criminal case outcomes measured, African American defendants have the worst outcomes in San Francisco:

- They are the least likely to be successfully diverted.
- They are the most likely to be released to another agency or have a motion to revoke supervision filed against them.
- They are the most likely to have felony charges filed for a felony arrest.
- They are the most likely to be convicted on a felony arrest.
- They receive the longest sentences for felony convictions.
- They are the most likely to be sentenced to state prison.
- For the seventh outcome measure, the likelihood that the case will be discharged or dismissed, Asian suspects fared the worst.

Nearly all of the disparities measured are driven by case characteristics determined prior to the presentation of the case to the District Attorney’s Office, including: arrest charges; criminal history; criminal justice status (e.g. pending case; probation); pretrial detention (at the point of arrest).

The passage and implementation of California Proposition 47 in November of 2014 significantly narrowed racial disparities for nearly all the outcomes measured. Of particular interest, Prop 47 had a disproportionate impact on African American defendants, narrowing the racial gap associated with a criminal history and being detained pretrial, which led to a 50% decrease in the black/white sentence disparity in San Francisco.

- The study finds little evidence of the court dismissing cases filed by the District Attorney’s office at different rates across racial and ethnic groups, and those differences become insignificant after Prop 47.
- While the study finds little evidence of overt bias against any one race or ethnic group in the processing of criminal offenses in San Francisco, the results do indicate that factors associated with poverty, and that may have nothing to do with the underlying offense, bear upon disposition and sentencing outcomes in a manner that disfavors African American

defendants in particular. Prime among these factors is the observed impact of pretrial detention.

- Even in the post-Prop 47 era, pretrial detention and criminal history continue to drive disparities in outcomes between defendants in San Francisco. To the extent that prosecutors can maximize opportunities to safely release appropriate defendants from custody pretrial and maximize diversion opportunities that avoid conviction, these disparities may be further reduced.

Safe Access to Courts for Immigrants (2018)

Sponsored by District Attorney Gascón and in collaboration with Senator Scott Weiner and Assembly member Gonzalez Fletcher, the Safe Access to Courts for Immigrants Act (SB 785) does not allow the prosecution or defense in a criminal case to ask questions about a person's immigration status in public court, unless the judge allows it.

Immigration Status Must be Relevant

The presiding judge must rule at an in camera hearing (in his chambers in a non-public setting) that evidence about a witness's immigration status is relevant before it can be asked about in open court.

Witnesses Should Not be Afraid to Testify

In March 2017, California Chief Supreme Court Justice Tani Cantil-Sakauye sent a letter to U.S. Attorney General Jeff Sessions and Homeland Security Secretary John Kelly expressing concern over reports that immigration agents were stalking undocumented immigrants in California courthouses. By publicly stating the immigration status of individuals in our courthouses even when it is irrelevant to the trier of fact, some officers of the courts are chilling participation by undocumented immigrants by conveying to them that participation may lead to their deportation. Governor Jerry Brown signed the act into law in 2018.

Safety and Justice Challenge (2018)

In 2018, SFDA secured a \$2 million grant from the John D. and Catherine T. MacArthur Foundation to reform the local justice system. The funding supports the implementation of strategies that address the main drivers of local jail incarceration, including unfair and ineffective practices that take a particularly heavy toll on people of color, low-income communities, and people with mental health and substance abuse issues.

The City and County of San Francisco has been reducing its jail and prison populations at a pace that far exceeds state and national rates. According to a recent analysis, San Francisco's current incarceration rate of 279 per 100,000 population is less than half the rate for California, and less than one third the national rate. Furthermore, the analysis indicated that this decline in the correctional population has occurred at the same time as San Francisco's crime rate has reached historic lows.^{xv}

Despite a significant drop in San Francisco's incarceration rate and advancements in the county's custodial programs and community-based alternatives, there is still an over representation of young adults of color and those with behavioral health needs in our jails. To continue reducing the jail population safely, the collaborative will implement five key strategies aimed at addressing system inefficiencies and disparities, meeting the needs of those with behavioral health and substance abuse issues, and instituting non-jail options for individuals facing charges for lower-risk offenses.

The specific strategies include pre-arrest and pretrial diversion, criminal sentencing, and correctional strategies that emphasize rehabilitation and reduce recidivism, improvements to case processing efficiency, enhanced services for people with mental illness or substance abuse issues involved with the justice system, and root out disparity and racial bias. Over the next two years, San Francisco will develop evidence-based criminal sentencing and correctional strategies that emphasize rehabilitation and reduce recidivism, emphasize fairness, root out disparity and racial bias, prioritize public safety and victim protection, and efficiently use criminal justice resources. Ultimately, this funding will help eliminate the need for a replacement jail facility.

The San Quentin News Forums (2014)



"A life-changing experience." - District Attorney George Gascón

The First Forum and Partnership of its Kind

Born out of an unlikely partnership between a district attorney's office, a former newspaper owner, and inmate at San Quentin, the SFDA/San Quentin News Forum represents the first-of-its-kind collaboration at San Quentin between inmates and prosecutors to discuss incarceration, rehabilitation, and reentry to further push and evolve our criminal justice system.

A Growing Success

Since its inception in 2012, the Forum has expanded its reach. The SFDA's Office now takes trips to San Quentin with regularity, with each visit including a growing number of prosecutors from the office, politicians, and judges from throughout the Bay Area.

In 2017, District Attorney Gascón and members of the SFDA's Office led more than 40 elected district attorneys and approximately 28 assistant district attorneys from throughout the United States to San Quentin. The event occurred as part of the itinerary for an annual prosecutor's conference hosted by the SFDA's Office this year. The elected DAs in attendance came from New York, Baltimore, Chicago, Houston, and many other cities in between.

The Forum has also proved to be successful in another way. The inspiration behind the office's first-of-its-kind (for a prosecutor's office) Formerly Incarcerated Advisory Board ("FIA Board") came from a SQ Forum. The FIA Board, which includes District Attorney Gascón, members of his office, and formerly incarcerated men and women, meet regularly to discuss more effective strategies and policies for reducing recidivism.

Founded in 2012 by the SFDA's Office, a Former Newspaper Owner, and Inmate at SQ

The idea behind the Forum first developed after a prosecutor from the SFDA's office attended a general newspaper meeting at San Quentin. The meeting, held by a former newspaper owner and facilitated by the editor-in-chief of the San Quentin Newspaper, focused on skills development for

managing a successful publication. As the men interacted, they shared their personal insights on the role of incarceration in their lives and their ideas for impacting positive change beyond the walls of San Quentin. It quickly became apparent that the men had as much to impart as they had to learn. Recognizing the value of the conversation within the broader arena of criminal justice reform, District Attorney Gascón and a team from the office traveled to San Quentin months later to hear the men themselves, inaugurating the first Forum and beginning a growing relationship between the office and San Quentin.

Listening to their Experiences to Promote Public Safety

The purpose of the SQ News Forum is to promote public safety through honest conversations between the incarcerated men and prosecutors in our office. During forums, the men speak with truth and accountability about their crimes and their upbringing, and answer questions raised by prosecutors and policy thinkers from the office.

Broad topics of discussion include incarceration, rehabilitation, and reentry, and often lead to deeper discussions about factors that underlie criminal behavior, effective strategies for safely expanding rehabilitation programs, and the tools that the recently released need to succeed upon parole. The men also speak candidly about their childhoods, focusing on mechanisms to reduce the entry of at-risk juvenile offenders into the criminal justice system.

Path to Reform by Looking Within

The SQ News Forum provides a platform for men on the inside to be of service to the community on the outside. Through these conversations, there is hope that law enforcement and incarcerated individuals can work together by relying on each other's experiences to more meaningfully and justly transform our criminal justice system.

Secure Our Smartphones (2015)

In 2012, the increasing popularity of smartphones coincided with a surge in violent smartphone robberies. A stolen handset could be sold on the street for \$200 and then fenced to countries overseas where they could sell for as much as \$2,000.

District Attorney Gascón was the first official to hold smartphone manufacturers accountable, and request that they implement theft deterrent technology on their phones, later regarded as a “kill switch,” to make the valuable devices worthless in the event that they were stolen. He co-chaired an international coalition of law enforcement officials, big city mayors, and consumer rights groups called “Secure Our Smartphones,” which called on the smartphone industry to implement the existing technology. The companies refused, and the increasingly global epidemic hit its peak in 2013 with 3.1 million victims in the United States alone.

Subsequently, District Attorney Gascón drafted and helped pass legislation Senate Bill 962, which required every smartphone sold in California to come with “kill-switch” technology. The Secure Our Smartphones initiative and the corresponding legislation have been credited with a 50% reduction in smartphone robberies in San Francisco. Additionally, the required technology was implemented on handsets sold worldwide, and as a result, cities around the globe have seen similar reductions.

Senior Pedestrian Safety Awareness (2017)



SFDA, in support of Vision Zero SF, wants to help end senior citizen traffic fatalities within our city. Seniors are a particularly high-risk group as 63% of pedestrian fatalities in 2016 were seniors even though they only constitute 15% of the city's population. Furthermore, many of these deaths are often preventable. Red light running, failure to yield to pedestrians, and speeding were the top three causes of traffic fatalities.

Therefore, SFDA seeks to raise awareness for senior pedestrians in an effort to bring attention to the unique issues they face regarding traffic safety. In bringing this important matter to light, we hope to make San Francisco a safer environment for the numerous senior citizens who walk throughout the city. By driving more carefully around the city, yielding to pedestrians, and not speeding, we can show respect and appreciation for our seniors.

Facts

- In 2016, seniors (65+) comprised 15% of the population but made up 63% of all pedestrian fatalities.
- 88% of pedestrian fatalities in 2016 were people aged 60 and older.
- Senior pedestrians are 5x more likely than younger people to die from a vehicular collision.
- 62% of all senior pedestrian injuries and 71% of fatal or severe injuries occur on 12% of streets, known as the "High Injury Network".
- A person hit by a vehicle traveling 20 mph has a 90% chance of survival while a person hit by a vehicle traveling 40 mph has a survival rate of 20%.
- Priority locations where senior pedestrian incidents are most frequent.

Sentencing Commission (2012)

Advancing Public Safety and Utilizing Best Practices

The San Francisco Sentencing Commission, an initiative of the SFDA, was created through local legislation to:

1. Analyze sentencing patterns and outcomes
2. Advise the Mayor, Board of Supervisors, and other City departments on the best approaches to reduce recidivism
3. Make recommendations for sentencing reforms that advance public safety and utilize best practices in criminal justice.

Multidepartment Representation

The commission, which launched in 2012, includes representation from the SFDA, Public Defender's Office, Adult Probation Department, Juvenile Probation Department, Sheriff's Department, Police Department, Department of Public Health, Reentry Council, Superior Court, nonprofits serving both victims and ex-offenders, a sentencing expert, and an academic researcher with expertise in data analysis.

3 Working Groups

To date, the Sentencing Commission has reviewed a wide array of data and heard from experts on a range of issues, including: local, state and national sentencing trends and legislative reform; models for recidivism reduction; young adult offenders; drug law reform opportunities; and others.

Ultimately, through this work, the commission will make recommendations that establish a sentencing system that retains meaningful judicial discretion, avoids unwarranted disparity, recognizes the most efficient and effective use of correctional resources, and provides a meaningful array of sentencing options.

Sentencing Planning Program (2012)

Prosecutors Role in Recidivism Reduction

Our prosecutors increasingly recognize that they can—and should—play a key role in recidivism reduction, but they need practical tools to take the leap from ideal to real.

In 2012, the SFDA launched the Sentencing Planning (SP) program, becoming the first office in the State of California to hire a Sentencing Planner. Since then, the program has doubled its capacity with two Sentencing Planners, and transforms the way that prosecutors approach cases by developing individualized sentences that address the needs and risks of justice-involved individuals. This model fundamentally shifts our prosecutorial mandate and approach, moving from the traditional metrics of conviction rates and prison terms to recidivism reduction and community safety.

Disrupting the Cycle of Crime

In 2011, following the passage of AB 109 (California Public Safety Realignment), individuals convicted of non-serious, non-violent, and non-sex crimes were either transferred from state prison to local jails or released on non-custodial mandatory supervision. Many of these individuals returned to the community with minimal or no services to address their criminogenic needs, increasing their risk of recidivating. In an effort to break this cycle of crime, the SP model focuses on offenders and their readiness for rehabilitation through the application of evidence-based practices designed to reduce reoffending and increase individual accountability.

Evidence-based Practices

The SP model is comprised of two Sentencing Planners with expertise in evidence-based programs to address criminogenic needs, and detailed knowledge of programs and services available in San Francisco. The SPs are assigned certain types of cases—primarily gang cases, and those involving young adults—and also receive referrals from prosecutors during the early stages of prosecution. An SP conducts an in-depth case review, often including interviews with the defendant and his/her attorney, to determine if alternatives to incarceration are appropriate for the defendant. The SP subsequently provides a written report with detailed recommended dispositions including education requirements, vocational training requirements, rehabilitation and behavior adjustment programs, and, when requested, the length and type of supervision. The prosecutor decides whether to incorporate the SP's recommendations into her final disposition.

Cost and Recidivism Reduction

The simplicity of the SP program belies the significance of its reform to the system. It redefines a “win” for prosecutors. It reduces costs across all stages of the criminal justice system—from the courthouse, where cases resolve faster, to jails and prisons, to the street, where police no longer expend resources on individuals who would otherwise remain enmeshed in the cycle of crime.

Independent evaluation of the SPP program, conducted by UC Berkeley in May 2014, found compelling evidence that it reduces recidivism and prosecutor reliance on incarceration. In 2019, SFDA added a third Sentencing Planner to focus on mental health needs.

Transforming Youth Justice: Closing Juvenile Hall (2019)

In spring of 2019, District Attorney Gascón worked with members of the San Francisco Board of Supervisors to introduce legislation that calls on the City to stop detaining youth in our juvenile hall by December 2021. The legislation, which passed by a vote of 10-1, creates a work group to develop a plan for expanding community-based options for system-involved youth, creating a smaller, less institutional secure setting for the small number of young people who require detention, and reinvesting justice system funds into our young people, their families and communities.

San Francisco Chronicle Open Forum: San Francisco is right to close juvenile hall

By George Gascón June 10, 2019 Updated: June 10, 2019 5:51 pm

Today we have both an opportunity and a mandate to reimagine our approach to young people who commit crimes. So, if we could start fresh, what would we do differently? We've learned a lot about adolescent development and neuroscience that validates common sense. For example, we know that fear destroys our capacity to learn. We know that isolation activates the harmful stress hormone cortisol in our bodies, with lasting damage. On the flip side, we know when young people are valued and heard, given personal agency, treated fairly and connected to others, they seek new paths and thrive.

Isolating a child in his or her bedroom for long periods is not an effective means of changing behavior. Yet when young people commit crimes, our response for decades has been to put them in a cold, concrete box. Are we really surprised that when they get out, they lash out?

The future of juvenile justice needs to reflect what we know now. When kids commit crimes, our response must include a range of strategies that lead to true accountability, collaboration, resolution and a better path forward for everyone involved. Those strategies should include supportive environments in our communities that are safer, more rehabilitative and much less costly than traditional juvenile detention.

Many jurisdictions will continue to need a secure setting for the small number of young people who must be detained — though as briefly as possible — in the interest of community safety. But we must leave the days of big juvenile institutions behind us.

I have devoted nearly four decades of my life to keeping our communities safe as a beat cop on the streets of Los Angeles, as a police chief in Mesa, Ariz., and San Francisco, and now as an elected prosecutor. Over this time, American law enforcement leaders have evolved as data and research have proven that public safety suffers when we rely too heavily on our most expensive intervention: incarceration.

As we rethink our approach to juvenile detention, we should expect as much of our justice system—and of ourselves—as we do of young people: to learn and grow from our mistakes, to try new things even when they feel uncomfortable, to resist lashing out on impulse, and to move beyond immediate gratification and think about the long term. None of these things is easy to do at any age, but the future of these kids, of our communities' safety and of our justice system depends on it.

Young Adult Court (2015)

San Francisco Young Adult Court

In 2015, SFDA partnered with justice agencies and community organizations to develop a “Young Adult Court” (YAC) designed to address the unique needs of young adults—ages 18-25. YAC offers a “collaborative, problem-solving” model to young adults charged with both violent and non-violent felonies and misdemeanors. While excluding criteria do exist—including the use of a firearm and individuals with a prior strike—the San Francisco model seeks to address the root causes of more serious crime. Together with San Francisco’s existing services for these transitional age young adults, YAC was created to ensure justice-involved young adults start their path into adulthood with the support they need to be healthy, engaged members of their families and communities.

YAC is a partnership of the District Attorney, San Francisco Superior Court, Public Defender, Adult Probation Department, Felton Institute, Goodwill Industries of San Francisco, San Mateo & Marin Counties, Sunset Youth Services and UCSF Citywide Forensic Case Management. The program is funded through the San Francisco Department of Children, Youth and Their Families, California Board of State and Community Corrections, and the District Attorney’s Office.

YAC: Much More than a Courtroom

The YAC model goes beyond mere court appearances and builds on San Francisco’s work of establishing “collaborative” courts that coordinate responses to promote law-abiding behavior. Through collaboration with justice system colleagues and community organizations, justice-involved young adults are supported through a four-phase process that lasts 12-18 months: Engagement and Assessment; Stability and Accountability; Wellness and Community Connection; and, Program Transition (and graduation).

Each stage of the process includes additional activities and milestones that must be met before advancing to the next, as well as coordinated support services from city agencies and community organizations.

Promising Results

While program evaluation is underway, initial results indicate some early success. As of June 30, 2019, almost one hundred young adults have graduated from YAC and the program consistently is filled to capacity. The model has generated significant interest from other communities across the country and internationally, with replication efforts underway in Orange County California, Massachusetts and Texas.

END NOTES

- ⁱ “Community and the Crime Decline: The Causal Effect of Local Nonprofits on Violent Crime,” Patrick Sharkey et al., 2017.
- ⁱⁱ “The Nearly Perfect Recidivism Machine,” Interview with William R. Kelly, <https://thecrimereport.org/2017/07/17/the-nearly-perfect-recidivism-machine/>, 2017.
- ⁱⁱⁱ Aizer & Doyle, 2015; Gatti, Tremblay and Vitar, 2009; Hart, 2013.
- ^{iv} “Eliminating Mass Incarceration: How San Francisco Did It,” James Austin, 2016.
- ^v *The Little Book of Restorative Justice*, Howard Zehr, 2002.
- ^{vi} “Collecting and Using Data for Prosecutorial Decisionmaking; Findings from the 2018 National Survey of State Prosecutors’ Offices,” Urban Institute, September 2018.
- ^{vii} “An Analysis of Racial and Ethnic Disparities in Case Dispositions and Sentencing Outcomes for Criminal Cases Presented to and Processed by the Office of the San Francisco District Attorney,” Steven Raphael, John MacDonald, 2017.
- ^{viii} “Clean Slate Toolkit,” Center for American Progress , <https://www.americanprogress.org/issues/poverty/reports/2018/11/15/460907/clean-slate-toolkit/>
- ^{ix} “Expungement of Criminal Convictions: An Empirical Study,” J.J. Prescott, Sonja B. Starr, 2019
- ^x “Racial/Ethnic Disparities in Arrests for Drug Possession After California Proposition 47, 2011–2016,” Alyssa Mooney et al., 2018.
- ^{xi} “An Analysis of Racial and Ethnic Disparities in Case Dispositions and Sentencing Outcomes for Criminal Cases Presented to and Processed by the Office of the San Francisco District Attorney,” Steven Raphael, John MacDonald, 2017.
- ^{xii} “The Impact of Proposition 47 on Crime and Recidivism,” Mia Bird et al., 2018
- ^{xiii} “Eliminating Mass Incarceration: How San Francisco Did It,” James Austin, 2016.
- ^{xiv} “Collecting and Using Data for Prosecutorial Decisionmaking; Findings from the 2018 National Survey of State Prosecutors’ Offices,” Urban Institute, September 2018.
- ^{xv} “Eliminating Mass Incarceration: How San Francisco Did It,” James Austin, 2016.

Attachment C
to Submission of sujatha baliga

Generic RJD District Attorney MOU

Memorandum of Understanding: Restorative Justice Diversion Agreement

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is by and between the following: ***[Insert name and title of District Attorney who has authority to make a binding agreement for the juvenile division]*** and ***[Insert participating agencies/organizations.]*** For purposes of this document, all participating organizations that will receive cases from the District Attorney’s Office (“DAO”) and any other referring agencies will be referred to as community-based organizations (“CBO(s)”).

Introduction and Definitions

The intention of this collaboration is to replace the charging and prosecution of youth who are arrested for felonies and high-level misdemeanors with Restorative Justice Diversion (RJD) through two models: (1) Circle and (2) Restorative Community Conferencing (“RCC”). In RJD, a young person accused of a crime meets face-to-face with their survivor. Family members and/or caregivers and other supporters of the process are also present. A plan by which the young person “does right” by their 1) survivor, 2) family/caregiver, 3) community, and 4) self is developed by consensus of all RJD participants. Because this is a pre-charge model, when the plan is completed, charges are never filed.

By creating spaces where young people can make amends directly to the people they have harmed, RJD helps participants understand the harm. The process also creates a space to listen and respond to the needs of the survivor, the person who harmed, and their communities; to encourage accountability through personal reflection and collaborative planning; to integrate the youth who harmed into the community as valuable and contributing members; to empower

families and/or caregivers to address youthful wrongdoing; and to create caring climates that support healthy families and communities.

This MOU also sets forth expectations upon the following participating organizations and agencies: ***[Insert all agencies and organizations signing this document]***. This MOU will become effective upon the approval of the DAO and the participating CBO(s).

Throughout this document, the terms “RJD” and “RJD program” refer to the initial outreach and intake of all parties, preparatory communications and meetings, the circle/conference itself, and any follow up communications and meetings that extend through plan completion and case closure, as well as all written and electronic documents and communications related to this process.

Agreements:

Types of Referrals. At the present time, the DAO should refer to RJD the most serious cases permitted by law for diversion and will not refer cases involving homicide or rape. The cases referred to RJD must be felonies or serious misdemeanors and must be crimes that, had they gone through the criminal legal system, would have resulted in penalties of probation or incarceration. These are cases that the DAO would have charged had RJD not existed. It is collectively understood that burglaries, robberies, assaults, arsons, teen dating violence, sexual assault and car theft and carjackings are ideal pre-charge RJD cases. All referred cases should have at least one identifiable survivor, although a small number of cases may ultimately proceed without the survivor’s presence, and instead with a surrogate survivor ideally of the survivor’s choosing. If the CBO does not have the appropriate staffing to take a case or cases, they will notify the DAO.

Prior History. Because studies show that youth who reoffend are most successful in the RJD program, the DAO and CBO agree to refer/accept cases of youth with prior records, adjudications of delinquency, deferred adjudications, including those with more than one prior offense and cases that result in a current term of probation. Neither the existence of prior offenses nor current probation status on priors shall be used as a basis for precluding a youth from participating in the RJD program.

The DAO and CBO will refer/accept youth who have prior or active dependent petitions, as long as the youth meets the other criteria for referral. Dependency shall not be used as a basis to preclude a youth from participating in the RJD program.

If a youth was referred to the RJD program in the past, the youth's prior participation or non-participation in the RJD program in connection with the past referral shall not be considered in determining subsequent eligibility. So long as a youth is arrested on a new charge that meets the referral criteria, that new case should be referred to the RJD program.

If a youth is currently in the RJD program and is arrested for an unrelated charge, so long as that charge also meets the RJD referral criteria, that case shall also be referred to RJD.

Once a youth's case is referred to the RJD program, it is up to the sole discretion of the CBO to return the case back to the referring agency. The DAO agrees that once the case is referred to the CBO, the referral cannot be undone without good cause.

Geographic Limitations. In accordance with the present capacity of **[CBO]**, cases will be diverted solely from within the following geographic areas: **[Insert geographic areas here and note this may be governed by jurisdictional concerns.]** This agreement can be modified by mutual agreements at any time.

Age of Youth who Caused Harm. Subject to state law, no age is too young, but **[CBO]** generally cannot take cases of youth older than 17.5 years, unless the youth will remain within the jurisdiction of juvenile court, under applicable state law, for at least six months after the time of referral. The CBO wants to ensure that if the RJD program is not appropriate, enough time will remain for the case to go through traditional channels prior to the youth's 18th birthday. In some states, a juvenile court can retain jurisdiction over a youth beyond the youth's 18th birthday under certain circumstances. *See, e.g.,* Cal. Welf. & Inst. Code §§607(g)(1) & (2).

Issues of Guilt. Cases in which there is clear evidence of guilt—where the responsible youth acknowledges that they have done wrong—are best for RJD. The DAO agrees that RJD is not meant to serve as an investigation tool.

Confidentiality Issues.

Generally. The DAO understands that any information learned in the conferencing process (including pre-circle/conference meetings) is confidential and will not be accessible. Should the DAO gain access to any information via any aspect of the RJD program, the DAO agrees that such information, will be treated as confidential (“Confidential Information”) and shall not be used against the youth accused of a crime in any juvenile or criminal proceeding or determination of probation violations. The DAO agrees not to subpoena information or testimony from RJD facilitators or other CBO staff or otherwise ask them to share Confidential Information learned in matters that involve youth who participate in circle/conference. The DAO also agrees not to subpoena or otherwise interview/investigate other RJD participants (in either prep meetings or in the circle/conference itself) to testify about any Confidential Information that is *learned through the RJD program*. Finally, the DAO **[if including the Probation Department and the Police Department, include them in the signature lines at the end of the document]**

agrees that a youth's agreement to participate in RJD, or the failure of a case to successfully resolve through RJD, will not be introduced into any juvenile or criminal proceedings for any purpose including for impeachment purposes.

Additionally, in cases with co-defendants, if all co-defendants meet the eligibility criteria, all co-defendants should be referred to the RJD program. In the cases where some co-defendants do not meet the eligibility criteria and cannot be referred, then the fact that any co-defendants are participating in RJD cannot be mentioned in any pleadings, probation reports, court proceedings, trial, or plea negotiations.

Confidentiality and Immunity of Other Participants. If the youth accused of a crime whose case is referred to RJD brings third party adults and/or other youth under 18 years of age ("Third Parties") to the circle/conference or prep sessions, or discusses any Third Parties in the circle/conference or prep session, the DAO agrees that information, including, but not limited to, the identities of those Third Parties will be treated as Confidential Information and shall not be used against any of the Third Parties in a court of law. The DAO agrees that any information obtained in the RJD program about Third Parties will not be used against those Third Parties in a court of law, regardless of whether the information pertains to the case at hand. The DAO will take appropriate measures and exercise reasonable care to maintain the confidentiality of all Third Parties.

Mandatory Reporting. Nothing in the MOU shall be interpreted in a manner inconsistent with state or local law governing mandatory reporting. Because mandatory reporting requirements may be in conflict with the RJD program, all facilitators must be trained on their reporting requirements and all participants in the program should be warned that certain information cannot be held in confidence under **[insert state]** state law.

Confidentiality Issues with Regard to Immigration Status. The DAO understands that any information learned in the conferencing process (including pre-circle/conference meetings) regarding immigration status of any of the participants will be confidential and shall not be accessible to law enforcement. Should the DAO gain access to any *new* information, the DAO agrees that all *new* information learned in the process (including pre-circle/conference meetings) regarding the immigration or documentation status of the referred youth, their families and/or caregivers, and others participating in or discussed in the RJD program will be treated as Confidential Information. The DAO agrees not to share such Confidential Information with any federal law enforcement or immigration agencies or authorities. The DAO will oppose any federal or other requests for information regarding the immigration status of any participant. The DAO agrees not to subpoena as a witnesses or ask questions of any RJD facilitators or other CBO staff about immigration facts learned in matters that involve the youth, the youth's family and/or caregivers, the other RJD participants, or people discussed during the RJD program. The DAO also agrees not to call other RJD participants (in either preparatory meetings or in the circle/conference itself) to testify or to answer questions about any information regarding immigration status that is learned through the RJD program. The DAO agrees not to ask anyone referred to RJD about their immigration status.

Multiple Referral Mechanisms. The confidentiality agreements, above, apply regardless of whether the case is referred to RJD through CBOs, faith-based organizations, schools, police departments, probation, the DA's office, courts, or individuals.

Prosecution of Uncompleted RJD Cases Returned to Referring Agency. It is understood that prosecution may proceed against youth participants based on information gathered before, after, or otherwise outside the conferencing process *if, and only if*, the conferencing process is

deemed by the CBO to have been unsuccessful in resolving the case. If an uncompleted case is returned to the referring agency, the seriousness of charges and possible penalties cannot be increased unless new information gathered outside the RJD program warrants an increase in the charge or penalty.

When a case has been referred through a law enforcement mechanism—namely school police departments, municipal police departments, probation, or the DAO—the DAO agrees to delay prosecution for 10 months from the date of the referral to RJD and only to prosecute if the case is returned to the referring agency. Subject to state and local law, this time period can be extended upon agreement of all signed parties if the RJD program needs to extend beyond 10 months. This provision is related only to the *specific case referred to RJD* and has no bearing on additional or previous crimes the young person may have committed. This provision is intended solely to delay prosecution of a case referred for RJD pre-charge until a reasonable time has been allotted to resolve the case through RJD.

Where cases have been referred through non-law enforcement mechanisms, such as school district disciplinary entities or CBOs, the DAO may not be aware that RJD is in progress. If any participating organization or agency learns that the DAO has initiated prosecution of a case referred to RJD, the organization/agency will contact the DAO to alert them to the ongoing RJD. All parties to the agreement agree that when cases are being resolved through RJD, RJD should be the sole forum for resolving the matter.

Liaisons and Requests for Cases. The CBO will contact the DAO when they are prepared to take a new case or set of cases. (The charging Assistant District Attorney or other District Attorneys are also welcome to contact a CBO when a case seems appropriate for RJD, although this is not expected.)

Reporting Status/Outcomes. The DAO will receive a brief case status memorandum from the CBO every four weeks that provides the following information: which cases are enrolled, which cases have completed the conference, which cases have completed the plan, and which cases are being returned. If a plan is completed, the case is considered successfully resolved and no charges will be filed. If at any point, the CBO deems the case inappropriate for RJD, the case will be returned to the DAO for prosecution (subject to the protections listed above).

Completion Timelines. At a maximum, the entire process will be completed within ten months from the date of referral, with the exception of specific cases that require time extensions and approval from all signed parties, as outlined above in “Prosecution of Uncompleted RJD Cases Returned to Referring Agency.”

Compensation. This MOU does not govern any contractual or financial arrangements between the parties.

Term and Termination. This MOU shall commence on the effective date and shall continue until **[insert termination date here]** unless sooner terminated pursuant to this paragraph: Any party may terminate its obligations under this MOU prior to expiration upon 30-day notice of one to any other. Any CBO may terminate its relationship with the DAO without affecting the remaining relationships governed under this MOU. Any RJD program that commenced under the terms of this agreement will be governed by the terms of this agreement, even if the MOU has been terminated. Commencement is determined by the receipt of the case from the referring entity.

Amendments. If for any reason, alterations or changes are made, all changes will be mutually agreed upon by all parties in a separate agreement as an addendum to this agreement.

Approvals:

[District Attorney of entire participating jurisdiction's District Attorney's Office]

Date

Executive Director
[Participating CBO facilitating RJD]

Date

[optional Person responsible for RJD]
[Participating CBO]

Date

Attachment D
to Submission of sujatha baliga

A Diversion Toolkit for Communities

How to build a pre-charge restorative justice diversion program that reduces youth criminalization while meeting the needs of people harmed.



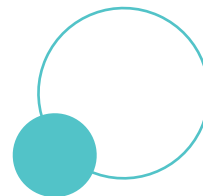
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Introduction

Sharing Experiences, Shifting the Paradigm

The Restorative Justice Project at Impact Justice partners with communities across the nation to address harm through dialogue among those most impacted. We work to shift the paradigm from seeing crime as a violation of the law to understanding crime as harm that requires individual, interpersonal, community, and system-wide accountability and healing. **Through our approach to restorative justice diversion (RJD), survivors have a voice in their healing process and young people are accountable for harm they've caused without being pushed into the juvenile legal system.**



Our approach to restorative justice diversion has developed and evolved over decades with the **primary aims of ending racial and ethnic disparities in our juvenile legal systems and orienting around people harmed**, all while relying on the wisdom of families and communities to resolve conflict and harm. To that end, our model of RJD occurs at the pre-charge diversion point of the juvenile legal system. The other elements of our approach include relationship-building, preventing net-widening, being strengths-based, and protecting confidentiality.

We began scaling our successful RJD program approach to seven counties nationwide by providing extensive training, technical assistance, and thought partnership to local community-based organizations (CBOs) and county-level system partners. In response to the stream of new requests for support from prosecutors and CBOs, **we launched this one-of-its kind interactive online toolkit so CBOs can begin starting RJD programs on their own.** The toolkit provides our first phase of technical assistance and prepares sites to begin receiving a suite of specialized trainings and support from us. Once trained, sites are ready to launch their own diversion programs. This toolkit was primarily created for community-based organizations interested in starting a restorative justice diversion program for youth in their county. Potential juvenile legal system partners can contribute by green-lighting, advocating, and opening doors for the program to succeed as **CBOs must be the ones to lead the implementation of a restorative justice diversion program.**

Introduction

1

Establish a Foundation

Starting this model of a restorative justice diversion program requires an understanding of youth criminalization in the US, an understanding of how the legal system impacts survivors, and of course, an understanding of the approach we are offering here. Step 1 introduces you to these concepts and recommends opportunities for deeper understanding through experiential learning such as trainings and workshops.



2

Build the Program

Step 1 helps you understand our approach to restorative justice diversion, its context, elements, and structure. Step 2 will help you determine if an RJD program is the right fit for your organization, engage the community to shape the program's development, and build relationships with your local juvenile legal system towards receiving case referrals.

3

Receive Training

Once you've completed the necessary steps of the toolkit, you and your RJD program staff are ready to receive training! This step describes how to sign up for a training from Impact Justice's Restorative Justice Project.



About

This section explains how and why this toolkit was created, provides instructions about how to use it, and explains why chosen language is used throughout.



What is this site?

A Diversion Toolkit for Communities emerged out of the need for publicly accessible information and resources on how to start restorative justice diversion (RJD) programs. The RJD program that sujatha baliga started in 2008 as a Soros Justice Fellow in Alameda County, California, has been successful at reducing recidivism, facilitating satisfaction among people harmed, and reducing social and fiscal costs, including reducing the criminalization of youth of color. Building on that experience, the Restorative Justice Project now partners with counties across the country to provide hands-on support to communities and systems partners implementing RJD programs. We are flooded with requests from community members, organizations, and systems agencies asking for guidance around starting RJD programs. The idea of an online toolkit emerged to meet many of these requests. We offer it in the spirit of evolving our training and technical assistance and collectivizing our resources to share widely and freely.

A common phrase used in our work is “restorative justice moves like water,” which describes how restorative justice flows through the world. This is the framework to guide your use of this toolkit. Restorative justice will flow into spaces that yield to it and are willing to receive it -- it will also flow around obstacles and can be powerful enough to forge its own path. Water represents flexibility and fluidity, characteristics you need to embody to succeed in starting a restorative justice diversion program. Water flows underground at all times,

About

even when we cannot see it or don't know it's there, and when it bursts through desert ground, it creates an oasis. Restorative justice has this exact effect; it is nourishing, life-giving, and powerful all at once. As you guide yourselves through the steps of this toolkit, know that like water, there are drops, creeks, streams, rivers, even oceans of restorative justice already in your community.

What do we mean by restorative justice diversion?

Diversion from the juvenile legal system to a program that uses restorative justice can exist in many forms. Depending on how broadly one defines diversion, it can take place at many different points in the juvenile legal process, i.e. pre-arrest, post-arrest, or pre-trial. Some even believe it's possible to divert post-incarceration, for example, from parole. Restorative justice is also described and practiced in many different ways (we explore this more in [1C: Restorative Justice](#)). In this toolkit, however, the term restorative justice diversion is meant to describe a specific model. Our approach to restorative justice diversion has developed and evolved over decades with the primary aims of **eliminating racial and ethnic disparities in our criminal and juvenile legal systems**, and **orienting around people harmed**, all while **relying on the wisdom of families and communities to resolve conflict and harm**. To that end, our model of RJD occurs at the pre-charge point of the juvenile legal system. The other elements of our model include **relationship-building, prevent net-widening**, being **strengths-based**, and **protecting confidentiality**. Our model will be outlined in-depth in [Step 1D: Restorative Justice Diversion](#).

Who is this toolkit for?

This toolkit was primarily created for community-based organizations interested in starting a restorative justice diversion program for youth in their county. While the toolkit is most applicable to the US, the core ideas and resources could be useful for people looking for alternatives to incarceration in other countries.

While it's wonderful if you come to this toolkit with knowledge and experience of restorative justice, you don't need to be familiar with restorative justice—that's one of the things this toolkit and necessary trainings will help with. [Step 2A: Program Fit](#) provides a thorough assessment for you to complete in order to gauge whether your organization is ready and aligned with the values of the model. Some things to consider in

About

determining whether your organization is a good fit for implementing a restorative justice diversion program are if your leadership and staff include people of color, LGBTQ/TGNC people, and folks with lived experience with the criminal legal system, whether as survivors or as those who've been accused of causing harm. Your organization should also be trusted within the local community and be skilled at working with youth.

Whoever you are, we're so glad you found this resource. Whether...

- you're curious about setting up community-based programs
- you want to learn more about restorative justice
- you're a community organizer
- or an advocate for people harmed,

we hope this toolkit will serve as a beneficial and informative resource.

It is always exciting when restorative justice diversion is something that sparks interest in folks working in the juvenile legal system. If this is you, we suggest reading through the steps of the toolkit and even passing it along to community-based organizations (CBOs) in your area. CBOs must be the ones to lead the implementation of this restorative justice diversion program, and potential juvenile legal system partners can contribute by greenlighting, advocating, and opening doors for the program to succeed.

How to use this toolkit

The Restorative Justice Project receives many requests from community-based organizations and system partners for support to launch restorative justice diversion programs; sadly, we currently lack capacity to partner with each community we hear from. Moreover, we've learned that much of the initial work to begin a restorative justice diversion program is best accomplished by local CBOs; we don't want to be "outside experts" because the true wisdom, knowledge, and strategies for implementing a program in a community must come from the people who live there. This toolkit, then, provides the initial pieces of the technical assistance we offer to support community-based organizations to prepare to launch their own diversion programs.

About

Included in the toolkit is a step-by-step guide through the initial stages of implementing this model of an RJD program, including building and strengthening relationships with community members and organizations, getting buy-in from system partners, and setting up a case referral process. Also included are templates and materials for you to download and customize for your use. The toolkit directs you to external resources, such as Impact Justice-vetted organizations that offer recommended trainings such as Community Circle Process, Harm Circles, and Implicit Bias. After completing the toolkit and receiving the recommended trainings, the final step is to sign up for updates about attending a Restorative Community Conferencing (RCC) training from the Restorative Justice Project.

You've already started the toolkit process by reading this section! Finish reading this About section, then get started with **Step 1: Establish a Foundation**. There are tasks and a corresponding checklist in each step for you to complete along the way. Track your overall progress on **Your Checklist** page and the progress bar on the left side of your screen. The dots on the progress bar will be automatically filled in once you complete all the checklist items in a step. **Step 3: Sign-up for Training** is the final step of the toolkit; provide your contact information in order to receive information about upcoming trainings from the Restorative Justice Project.

Included in the toolkit is a step-by-step guide through the initial stages of implementing this model of an RJD program, including building and strengthening relationships with community members and organizations, getting buy-in from system partners, and setting up a case referral process. Also included are templates and materials for you to download and customize for your use. The toolkit directs you to external resources, such as Impact Justice-vetted organizations that offer recommended trainings such as Community Circle Process, Harm Circles, and Implicit Bias. After completing the toolkit and receiving recommended trainings, the next step is to attend Restorative Community Conferencing (RCC) trainings by the Restorative Justice Project.

A note on language

We believe, in the words of Bryan Stevenson, that “each of us is more than the worst thing we’ve ever done.” We would add to this that each of us is also more than the worst things ever done to us. To reflect this, we use the terms “person harmed” or “survivor” and “responsible youth” or “young person” instead of “victim”

About

or “offender,” because we are all human and capable of transformation. We all deserve for our humanity to be the first thing recognized about us. We should not be defined by our actions or experiences when, at different times in our lives, we have all caused or endured harm. We want to allow for change and growth, not define each other by static events.

Former Chief Justice of the Navajo Nation, Robert Yazzie says that in Diné there is no word for “offender”; rather, they say a person is, “acting as if they have no family.” At a listening session around restorative justice held in British Columbia, Faith Tait from the Nisga’a Nation said, “We don’t have a word for offender in our language, the word we used means ‘un-healed.’”

Labels like “victim” also leave people fixed in time, and fail to make space for a person’s healing journey, and for the possibility that a person may ultimately find the victimization they experienced becomes an occasional memory, no matter how serious the crime. The label “victim” ignores the agency that restorative justice aims to return to those who have been harmed. However, “survivor” and “the person harmed” show that people can transcend something painful or unjust, or can be in the process of transcending harm.

We use the phrase “our model of restorative justice diversion” to describe the values, elements, and structure of our process. We would prefer to describe restorative justice as a way of life or a paradigm shift, and not with reductive terms like “model.” We acknowledge that in using the term “model,” we run the danger of limiting the expansiveness of restorative justice. At the same time, given the structural reality of current oppressive systems, we acknowledge that a structured response is necessary. If we were a fully restorative society, there would be no criminal legal system to divert from. Until that day, we offer a model steeped in our learnings and values while employing modern day tactics to begin a transformative shift in our society towards liberation.

Who We Are

The **Restorative Justice Project at Impact Justice** partners with communities across the nation to address harm through dialogue among those most impacted. We work to shift the paradigm from seeing crime as a violation of the law to understanding crime as harm that requires individual, interpersonal, community, and system-wide support for accountability and healing. Our approach is unique in its explicit goal of engaging communities to achieve healthy outcomes for youth accused of crime, while meeting the self-identified needs of people harmed and reducing recidivism, racial and ethnic disparities, and related social and fiscal costs.

Creating and writing this toolkit was truly a Restorative Justice Project team effort. Each of us has been shaped by our personal identities and professional backgrounds. Because of this, you will notice that the tone and style of writing changes from section to section, and even within sections. We decided to leave these stylistic variations as they are, because we are proud of our team effort on this toolkit and of the gifts that each of us brings to our work.

Our organization, **Impact Justice**, confronts mass incarceration, cruel and inhumane conditions, barriers to re-entry, and the failure to meet survivors' needs. We understand that our struggle for justice takes place in a context of historic, systemic, and pervasive racism. We are committed to changing hearts and minds, behaviors, and structures. This mission requires a strong foundation in principle, and the following core values undergird the work of Impact Justice:

- **Imagination.** We cannot build a just world until we dream it and tap into our creative power.
- **Common Humanity.** Our work recognizes the value in every person and the reality that any system that dehumanizes some of us dehumanizes us all.
- **Diversity and Equity.** We are rooted in our cultural differences and seek diverse perspectives. We recognize that both historically and presently, certain communities are targeted and harmed by systemic oppression, discrimination, and prejudice. We work to ensure our strategies and actions promote diversity, equity, and justice, based on race, ethnicity, gender, age, ability, sexual orientation, gender identity and expression, religion, language, national origin, immigration status, system involvement, socioeconomic status, and the multitude of intersections thereof.
- **Liberation.** We are part of greater movements to end individual, collective, and systemic oppression, so that all people are free to thrive.
- **Compassion.** We are committed to reducing and ultimately ending the trauma and pain that we see in the work we do.
- **Passion for Change.** To have impact, we are a relentless, determined, and unstoppable force.
- **Integrity.** We commit to bringing our core values to life in our work.

Your Checklist

Here is where you can keep track of your overall progress on the steps of the toolkit.

1A: YOUTH CRIMINALIZATION

LEARN about youth criminalization through reading this section and accessing other resources



WATCH the documentary [13th](#)



WATCH the short video [Jim Crow Juvenile Justice](#)



WATCH the short video [Youth Lead the Way: A Call for Community Over Incarceration](#)



1B : PEOPLE HARMED

LEARN about how the criminal legal system impacts people harmed through reading this section and accessing other resources



READ the report [Crime Survivors Speak: The First-Ever National Survey of Victims' Views on Safety and Justice](#)



Your Checklist

WATCH short video [Survivors Speak 2016: Honoring, Healing, and Hope](#)



1C: RESTORATIVE JUSTICE

LEARN about restorative justice through reading this section and accessing other resources



READ the [The Little Book of Restorative Justice](#)



WATCH [Restorative Justice in Oakland Schools: Tier 1. Community Building Circle](#) and the other films mentioned above about restorative justice



1D: RESTORATIVE JUSTICE DIVERSION

LEARN about restorative justice diversion through reading this section and browsing other resources



WATCH Wyatt Cenac's [Problem Areas Episode 09: Research Problems, Reef Problems, Punitive Problems](#)



Your Checklist

WATCH the restorative justice [webinar](#) presented by sujatha baliga, Director of the Restorative Justice Project at Impact Justice



REVIEW [Case & Program Eligibility Recommendations resource](#)



REVIEW [RCC Infographic resource](#)



REVIEW [RCC Stages resource](#)



REVIEW [RJD Program Overview & Elements](#)



1E: THE EVIDENCE

READ the report: [Restorative Community Conferencing: A study of Community Works West's restorative justice youth diversion program in Alameda County](#)



Your Checklist

READ the report: [New Zealand's Youth Justice Transformation: Lessons for the United States](#)



SEEK other sources about restorative justice, diversion using restorative justice, and diversion in general



1F: INTERACTIVE LEARNING

RESEARCH local, online, and out-of-the-area trainings



REGISTER for and **RECEIVE** trainings in restorative justice and circle processes



REGISTER for and **RECEIVE** training in implicit bias



HOLD CIRCLES in your organization and community



Your Checklist

2A: PROGRAM FIT

FILL OUT [Program Fit Questionnaire](#) to determine your next steps in the toolkit



REVIEW [RJD Program Organization Chart](#) and [RJD Program Staff Roles & Responsibilities](#)



REFLECT on how your community aligns with the criteria in the [Big Picture Site Assessment](#)



2B: COMMUNITY HELD

FILL OUT [Community Partner & Ally Landscape Worksheet](#) for creating directory of community organizations and organizers to include in RJD program creation



FILL OUT [System Partner & County Leadership Landscape Worksheet](#) on roles and needs from system partners by adding in the names of your local juvenile legal system staff members



Your Checklist

FILL OUT [System Partner Profiles](#) for system partners who will play crucial roles in starting and supporting an RJD program



CREATE a [Power Map](#) for your jurisdiction



2C: COMMUNITY VISION

HOLD [Listening Sessions or House Meetings](#) in your community



FILL OUT the charts on [Local Youth Justice Data](#)



FILL OUT the worksheet on [Local Youth Justice Landscape - Programs, Policies, and Boards](#)



2D: FUNDING

SET a fundraising goal



Your Checklist

2E: COMMON GROUND

READ FJP's *21 Principles For The 21st Century Prosecutor* report



ESTABLISH CONTACT with someone in the criminal and/or legal system



PRESENT RJD 101 powerpoint to potential system partners



ESTABLISH CLARITY and **UNDERSTANDING** of roles and expectations between all potential system partners and CBO



RECEIVE informal buy in from DAO



Your Checklist

2F: REFERRING CASES

RECEIVE and **ANALYZE** county data



DEVELOP ELIGIBILITY criteria with DAO using RJD Case Eligibility Setting worksheet



CREATE referral process with DAO



REVIEW the **MOU** and the **standing order** with a youth justice lawyer



INTRODUCE the **MOU** and the **standing order** to relevant system partners



SIGN the **MOU** and the **standing order**



Your Checklist

2G: RECEIVING CASES

FINALIZE any edits to both **MOU** and **standing order** so they are both ready to be signed at any point



IDENTIFY OR CONFIRM funding streams for your RJD program



HIRE necessary personnel for your RJD program



Step 1

1

STEP 1

Establish a Foundation

Understand youth criminalization, people harmed, and our approach to restorative justice diversion.



Starting a restorative justice diversion program requires an understanding of youth criminalization in the US, an understanding of how the legal system impacts people harmed, and of course, an understanding of restorative justice diversion. Step 1 introduces you to these concepts and recommends opportunities for deeper understanding through experiential learning such as trainings and workshops.

Step 1

STEP 1 SECTIONS:

1A **Youth Criminalization** **PG 20**
What Does Youth Criminalization Look Like in the US?

1B **People Harmed** **PG 26**
What do Survivors Need?

1C **Restorative Justice** **PG 30**
What is Restorative Justice?

1D **Restorative Justice Diversion** **PG 36**
What is Our Approach to RJD?

1E **The Evidence** **PG 51**
How do We Know RJD Works?

1F **Interactive Learning** **PG 57**
How do We Gain Deeper Understanding?

Step 1A

STEP 1A: YOUTH CRIMINALIZATION

What Does Youth Criminalization Look Like in the US?

Learn about the context of restorative justice diversion by considering the origins of youth criminalization in the United States, the harms caused by youth criminalization, and by the racial and ethnic disparities in the system.



IN THIS STEP:

Landscape

Historical Roots

Racial & Ethnic
Disparities

Harms of Criminalization

Checklist

This step asks you to learn about the landscape of youth criminalization in the US today and how the nation's history has shaped it. Racial and ethnic disparities, as well as the systemic harm caused to youth, families, and communities, will be outlined.

Landscape of Youth Criminalization

This step asks you to learn about the landscape of youth criminalization in the US today and how the nation's history has shaped it. Racial and ethnic disparities, as well as the systemic harm caused to youth, families, and communities, will be outlined.

The system of mass incarceration and criminalization in the United States harms youth long before they reach adulthood. In the US, 2.3 million people are incarcerated within federal prisons and jails, state prisons, and local jails, while an additional 4.7 million are enmeshed in the systems of probation and parole. A

Step 1A

staggering 7 million people are under the control of the US justice system. Children are separated from their incarcerated parents and are swept into these systems as well, making up approximately 50,000 of those incarcerated. An additional estimated 50,000 youth are on probation on any given day. According to the Office of Juvenile Justice and Delinquency Prevention (OJJDP), in 2016, over 280,000 youth cases resulted in system involvement via probation. Probation is not an alternative to incarceration, as probation violations are among the primary drivers of youth incarceration.

Over 800,000 youth under the age of 18 were arrested in the year 2017 alone. The Campaign for Youth Justice reports that every year in the US, nearly 100,000 youth are put into the adult criminal legal system, most of them for nonviolent offenses. Common drivers of youth arrest and incarceration are status offenses, meaning conduct that would not be considered a crime if it were committed by an adult. Examples of status offenses include truancy, running away from home, violating curfew, underage use of alcohol, and behavior that adults deem as unruly (legally referred to as general “ungovernability”). These systems of control and punishment stifle childhood development through practices that traumatize and dehumanize.

Youth of color make up the overwhelming majority of youth swept into the system. Data from The Sentencing Project’s *Policy Brief: Racial Disparities in Youth Commitments and Arrests* shows that between the years of 1999 and 2013, even as youth incarceration rates decreased, racial and ethnic disparities (RED) in incarceration continued to rise. Before we delve too deeply into how youth of color are disproportionately targeted and negatively impacted by the criminal legal system today, it is important to first understand our nation’s history, particularly in regards to the locking up of youth of color.

Historical Roots of the Current Punitive System

The historical roots of holding youth of color in confinement run deep in the United States, according to the Burns Institute report, *Repairing the Breach: A Brief History of Youth of Color in the Justice System*. Puritans coming from Europe had strict notions of how children should behave and what punishments were necessary should they ‘act out.’ During this same period, both African children brought over in bondage and sold into slavery and Native American children were viewed as less than human and unworthy of governmental or societal protection. Beginning in 1825, the first forms of youth detention centers were called “houses of refuge,” and were initially not even open to children of color, as people of color were considered “irredeemable.” However, that changed within a few decades and quickly resulted in significant disparities along racial lines. From the beginning of youth detention in the U.S., Black children were admitted to

Step 1A

detention centers at younger ages and, in comparison to white children of the same sex, served longer sentences and received harsher treatment.

In the South, bondage and forced labor of Black children continued on long after the Emancipation Proclamation ended the practice of legalized slavery in the US. The Freedmen's Code of 1866 provided former slaveholders a way of forcing newly-freed Black children into 'apprenticeships' under their supervision until adulthood. Further, the 13th Amendment provided a way for slavery to continue through the mechanism of incarceration. Convict leasing involved mass arrests and incarceration of Black people and then 'leasing' them out for financial benefit to companies who used them for hard labor in strenuous, and often fatal, conditions. According to an 1890 census analysis, when convict leasing was rampant, youth made up more than 18% of all Black people who were incarcerated.

In the late 1800's, racist pseudoscience used to predict criminality targeted youth of color, particularly from Black, Filipino, Native American, and Mexican communities. As described in the [Repairing the Breach: A Brief History of Youth of Color in the Justice System report](#), they experienced disproportionate institutional confinement and even underwent forced sterilizations. During this same period, Native American children were forcibly removed from their families and placed into Indian boarding schools to be assimilated into Western culture. This historical trauma continues to impact youth justice on reservations today.

All of these systems of confinement and cultures of racist stereotyping were replicated when the nation's first juvenile court opened in 1899 in Chicago, Illinois. Immediately, Black youth were overrepresented in court caseloads and a stark disparity emerged between the resource-rich facilities for white youth and those for Black youth. The practice of sending Black children to adult prisons thrived as well. This inequality negatively impacted communities of color by tearing families apart, and it propped up racist national narratives around youth of color being predisposed to criminal behavior.

All this gave rise to the 'superpredator' myth of the 1980's, which drastically ramped up youth incarceration and the presence of law enforcement at schools with majority students of color. For more information on how the legacy of slavery has shaped mass incarceration and disparities today, watch the documentary [13th](#) or the short video below, [Jim Crow Juvenile Justice](#) created by Youth First Initiative.

▶ Video: <https://www.youtube.com/watch?v=7hgXWK7-iZM>

Step 1A

Current Racial and Ethnic Disparities

Our nation's history of deciding which children are valued has led to the significant racial and ethnic disparities that continue to undergird the juvenile legal system to this day. Between 2003 and 2013 (the most recent year with available data), even though the rate of youth incarceration decreased, racial disparities in incarceration increased. In 2013, for example, Black youth were more than four times as likely as white youth to be incarcerated, Native American youth were more than three times as likely, and Latinx youth were almost twice as likely. These kinds of disparities exist at every step of the juvenile legal system; youth of color are more likely to be arrested, more likely to have their cases referred to juvenile court, more likely to be prosecuted, and, finally, more likely to be sentenced for exhibiting the exact same behaviors as white youth.

Racial and ethnic disparities (RED) further persist in sentencing. In 2013, Black and Latinx youth were more likely to have lengthier sentences in local facilities than white youth. RED also shows up in the types of offenses youth are charged with. Technical violations, which can include a failure to appear for a drug test, or an inability to pay restitution, can result in incarceration in a racially biased manner. In 2013, youth of color were significantly more likely to be committed to an out-of-home placement for a technical violation than for any other offense. In the same year, 67% of youth incarcerated for a technical violation were youth of color. Particularly alarming is the increased disparity in treatment of Native American youth; in every type of facility and in every offense category, the disparity gap for Native American youth increased between 1997 and 2013. In 2013, Native American youth were more likely to be removed from their homes by the juvenile legal system than white youth were in 1997, during the height of incarceration.

LGBTQ youth are also disproportionately impacted by the juvenile legal system as outlined in the Youth First Initiative article, [*Geography of America's Dysfunctional & Racially Disparate Youth Incarceration Complex*](#). They are twice as likely to end up in juvenile detention; 20% of youth in juvenile detention facilities identify as LGBTQ while only making up 7-9% of the nation's overall youth population. They are also more at risk of harassment, emotional abuse, physical and sexual assault, and prolonged periods spent in isolation while incarcerated. Furthermore, the 2017 report, [*Unjust: LGBTQ Youth Incarcerated in the Juvenile Justice System*](#), reported that 85-90% of incarcerated LGBTQ youth are youth of color.

How Criminalization Harms Youth and Communities

Research has shown that the juvenile legal system frequently has the opposite impact of its stated intention of rehabilitation. The removal of a young person from their family, community, and support networks is

Step 1A

traumatic and inhibits positive development. Further studies have shown that the vast majority of children who are arrested will naturally grow out of behavior that is criminalized and transition well into adulthood *without* any contact with the juvenile legal system.

Lengthy out-of-home placements interrupt a young person's education, and once incarcerated, many young people have difficulty returning to school. The longer a youth is in an out-of-home placement, the longer they are disconnected from their family, their community supports, and their educational pursuits. In addition, practices such as strip searches, physical restraints, and physical abuse can result in severe trauma that makes reintegration in family, school, and community a massive, often insurmountable struggle post-detention.

The 2011 Annie E. Casey Foundation report, [*No Place for Kids: The Case for Reducing Juvenile Incarceration*](#), firmly states that our current system is dangerous, ineffective, unnecessary, obsolete, wasteful, and inadequate. If you're interested in learning more about how our current punitive system harms youth and communities, please refer to Juvenile Law Center's report, [*Broken Bridges: How Juvenile Placements Cut Off Youth from Communities and Successful Futures*](#), Burns Institute's, [*Stemming the Rising Tide: Racial & Ethnic Disparities in Youth Incarceration & Strategies for Change*](#) and [*The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model*](#).

Absorbing these statistics and grappling with the consequences of youth criminalization can be a heavy experience. We should not look away from this painful reality; indeed, we need to first listen to the voices of young people who are directly impacted by these systems. Watch the video below, [*Youth Lead the Way: A Call for Community Over Incarceration*](#), to hear young people call for community-based solutions.

▶ Video: <https://www.youtube.com/watch?v=ho7hM5D5X1k&feature=youtu.be>

A growing body of research reveals that community-based alternatives to incarceration, such as the restorative justice diversion (RJD) model outlined in this toolkit, are more successful in supporting children to thrive and in reducing recidivism. You will read more about the proven results of RJD in the evidence section of the toolkit. Read on to the next section to learn more about the impact of the current criminal legal system on people harmed.

Step 1A

1A CHECKLIST (SEE FULL CHECKLIST ON PAGE 9)

LEARN about youth criminalization through reading this section and accessing other resources



WATCH the documentary [13th](#)



WATCH the short video [Jim Crow Juvenile Justice](#)



WATCH the short video [Youth Lead the Way: A Call for Community Over Incarceration](#)



Step 1B

STEP 1B: PEOPLE HARMED

What Do Survivors Need?

Learn how the criminal legal system impacts survivors and the ways in which that system does not always meet the needs—or answer the questions—of people harmed.



IN THIS STEP:

Landscape

Unmet Needs

Alternatives

Checklist

In [Step 1A: Youth Criminalization](#), you learned about the historic roots of the criminal legal system and its devastating impact on youth and communities of color. This step covers the negative impact this system can also have on survivors.

Landscape of Survivors

Crime impacts large numbers of people in the United States every single year. In 2014, the US Department of Justice's [National Crime Victimization Survey \(NCVS\)](#) reported more than 13 million people were directly harmed by crime. About 8% of all households have experienced property crime, and more than three million people were impacted by at least one violent crime. Alliance for Safety and Justice's 2016 [Crime Survivors Speak](#) report outlines the findings of their first-of-its-kind national survey of survivors' views on safety and justice. This survey found that 1 in 4 people in the US have been harmed by a crime in the past 10 years, and

Step 1B

about half of those experienced a violent crime.

People who have been harmed are, unsurprisingly, a very diverse group. The Alliance for Safety and Justice survey found that 35% of survivors of a violent crime have also experienced multiple crimes. And, despite the [tendency of news media](#) to highlight stories about crime when the survivors are young white women, people of color are disproportionately impacted by crime. Black people in particular are nearly one-third more likely to be survivors of crime than white people. Statistics also clearly indicate that young people, people living in cities, and people in low-income communities are all disproportionately impacted by crime. Understanding the landscape and demographics of survivors in the US can help guide how we respond to harms in our communities. The voices of people harmed should be considered first and foremost when we evaluate our current system and imagine different possibilities.

Needs Unmet by the Current System

Our criminal legal system is intended to play a critical role in facilitating medical, economic, and emotional recovery for those who have been harmed. However, few people harmed report that the criminal legal system provided any assistance to them. In fact, 2 out of 3 survivors surveyed for the [Crime Survivors Speak](#) report received no help following their harm. Only 1 in 4 survivors received assistance from a law enforcement agency, while only 1 in 10 received help from a district attorney or prosecutor's office. Further, many crimes are never reported to authorities because of a common belief that the criminal legal system simply won't help. Survivors are seeking a system of justice that values their voice and their individual healing process.

In fact, the wishes and needs of survivors are often impossible to address in the setting of legal proceedings. Judith Lewis Herman wrote in, "Justice from a Victim's Perspective":

Victims need social acknowledgment and support; the court requires them to endure a public challenge to their credibility. Victims need to establish a sense of power and control over their lives; the court requires them to submit to a complex set of rules and bureaucratic procedures that they may not understand and over which they have no control. Victims need an opportunity to tell their stories in their own way, in a setting of their choice; the court requires them to respond to a set of yes-or-no questions that break down any personal attempt to construct a coherent and meaningful narrative. Victims often need to control or limit their exposure to specific reminders of the trauma; the court requires them to relive their experience... Indeed, if one set out intentionally to design a system for

Step 1B

provoking symptoms of traumatic stress, it might look very much like a court of law.

Survivors are often characterized as being weak and in need of protection by the criminal legal system. This line of thinking justifies the legal system in taking the case fully and completely out of the hands of people harmed. People who have been harmed lose their right to participate fully in determining the consequences for the harm they've experienced when judges and lawyers take over this determination. People harmed lose the opportunity to heal through being fully heard. This “protection” of survivors not only discounts their strength and agency, it also ignores the reality that they know their story and their needs best. The Justice Policy Institute's report, [*Smart, Safe, and Fair: Strategies to Prevent Youth Violence, Heal Victims of Crime, and Reduce Racial Inequality*](#), found that survivors of harms caused by young people want a voice in the process that resolves the young person's behavior.

Alternatives to Punishment

It would be wrong to assume that people harmed align with “tough on crime” advocates who favor harsh sentences and long periods of incarceration for those who have caused harm. The National Survey on Victims' Views found that the overwhelming majority of survivors strongly prefer investments in prevention and treatment over more spending on prisons and jails. These views are consistent across all demographics of survivors, regardless of race, sex, gender, age, income, political party affiliation, or whether the crime experienced was violent or nonviolent.

- By a margin of nearly 3 to 1, survivors of crime believe that prison is more likely to make people commit crimes than to rehabilitate them.
- 38% of people who have been harmed believe that the US sends too many people to prison.
- People harmed do not believe that incarceration results in accountability, and they would prefer youth be given opportunities to get the support they need so they no longer harm others or themselves.
- By a 2 to 1 margin, survivors of crime prefer that the criminal legal system focus on rehabilitation and not punishment. They would rather see money invested in prevention and rehabilitation than longer prison sentences.
- People harmed also state a preference for investment in schools, job creation, and mental health treatment instead of prisons and jails.

Step 1B

These views remain true for survivors of nonviolent crimes—such as theft and vandalism—and survivors of violent crimes—including rape or murder of a family member.

It is time that we listen and respond to the experiences, opinions, feelings, and needs of people who have been harmed. Watch the video below, [Survivors Speak 2016: Honoring, Healing, and Hope](#), to see and hear the power of the annual gathering of survivors is like in the voices of survivors.

▶ Video: <https://youtu.be/bcvRuF-1Rfo>

Restorative justice, and the approach to restorative justice diversion described in this toolkit in particular, provides people harmed with the opportunity to have their voices heard and their needs met. This model offers people harmed with an alternative path to justice that doesn't rely on the harmful practice of incarcerating young people. Continue on to the next step to learn more about restorative justice.

1B CHECKLIST (SEE FULL CHECKLIST ON PAGE 9)

LEARN about how the criminal legal system impacts people harmed through reading this section and accessing other resources



READ the report [Crime Survivors Speak: The First-Ever National Survey of Victims' Views on Safety and Justice](#)



WATCH the short video [Survivors Speak 2016: Honoring, Healing, and Hope](#)



Step 1C

STEP 1C: RESTORATIVE JUSTICE

What is Restorative Justice?

Start learning about restorative justice, its origins, and the different forms it can take. You will also get referrals to other resources that offer deeper and more thorough information about restorative justice.



IN THIS STEP:

Origins

Paradigm Shift

Forms of RJ

Checklist

Steps 1A: Youth Criminalization and **1B: People Harmed** described how punitive responses to harm enacted by the criminal legal system perpetuate racial and ethnic disparities and fail to meet the needs of people harmed. Young people who have caused harm and had their cases processed through the criminal legal system are calling for an alternative. Their families and communities have called for another path. People harmed also seek an alternative path to justice, healing, and accountability. Restorative justice has the potential to respond to all of these calls.

Honoring Ways & Practices of Indigenous Peoples and the Origins of Restorative Justice

There are both indigenous and western roots to restorative justice, and as the movement grounds itself in truth and liberation for all, both of these roots should be recognized and explored. Restorative justice in the

Step 1C

United States can be traced back to indigenous origins. Although examples of what many have termed “restorative justice” among First Nations communities in Canada have been well documented, less has been written about equivalents in the US. Part of the difficulty in tracing restorative justice back to specific practices within indigenous communities is that they do not typically hold “restorative justice” as a program or a model, but rather as part of their lives and embedded in their culture. “Restorative justice” is a Western term. Moreover, the indigenous roots are not monolithic—indigenous communities practice circles and justice in different ways. Part of honoring this work means we must stay humble, knowing that these practices came before us and will outlast us.

At its core, restorative justice is about relationships, how you create them, maintain them, and mend them. It is based on the philosophy that we are all interconnected, that we live in relationship with one another, and that our actions impact each other. Grounded in this idea of interconnectedness, restorative justice is able to provide an alternative way of addressing wrongdoing. Wrongdoing is seen as a damaged relationship, a wound in the community, a tear in the web of relationships. Because we are all interconnected, a wrongdoing ripples out to disrupt the whole web—a harm to one is a harm to all.

Paradigm Shift

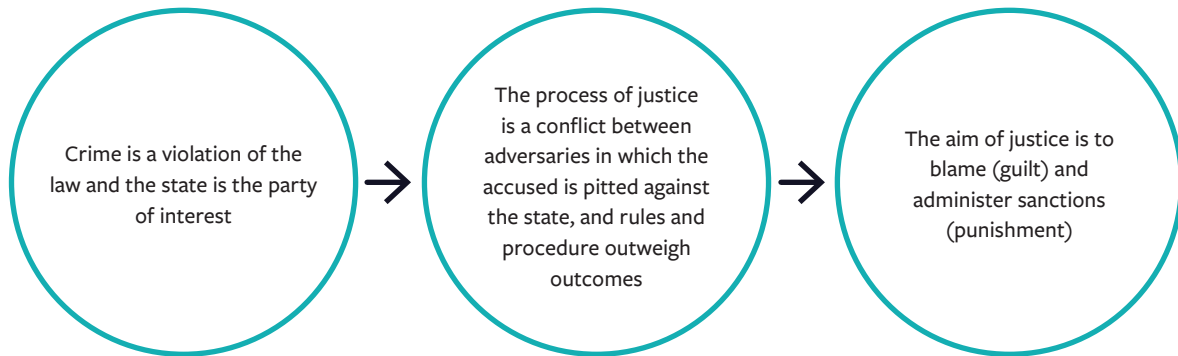
Restorative justice offers guidance on how to respond when wrongdoing occurs. The focus on punishment within the US criminal legal system typically does not serve to heal the person harmed or provide space for genuine accountability and growth for the person who caused the harm. Restorative justice shifts the paradigm of our current systems by making a radical commitment to meeting the needs of those harmed, those who caused harm, and community members. The restorative justice process allows for all their voices and needs to be heard. Howard Zehr, renowned internationally for his seminal thinking and writing about the Western concept of restorative justice, defines restorative justice as:

an approach to achieving justice that involves, to the extent possible, those who have a stake in a specific offense or harm to collectively identify and address harms, needs, and obligations in order to heal and put things as right as possible.

Zehr speaks and writes about **changing lenses** when comparing the criminal legal system with restorative justice:

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Viewing Harm Through a Punitive Lens



Viewing Harm Through A Restorative Lens



When harm occurs, the current criminal legal system asks...

1. What law was broken?
2. Who broke it?
3. What punishment is deserved?

In contrast, restorative justice asks...

1. Who was harmed?
2. What are their needs?
3. Whose obligation is it to meet those needs?
4. Who has a stake in this situation?
5. What are the causes?
6. What is the appropriate process to involve stakeholders in an effort to put things right and address underlying causes?

Step 1C

Restorative justice as a paradigm shift provides value far beyond simply being an alternative to criminalization and incarceration. In the [final report](#) of the Zehr Institute's Restorative Justice Listening Project, restorative justice is referred to as a movement that “embodies a relational justice lifestyle that invites people to live-right, do-right, and make-right through human connection and community for the sake of the ‘common good.’” It asks us to shift from holding power ‘over’ others to holding power ‘with’ them, as well as believing in each person’s capacity to best know their needs and honor their agency. This shift allows for the redistribution of concentrated power from an individual towards the collective. In this way, restorative justice can seek healing and accountability not only at the personal level, but also at the structural levels of society. Addressing structural harms can include both present injustices and the legacy of historical harms.

[The Little Book of Restorative Justice](#) is a fantastic resource for learning about restorative justice. A short video below by Brave New Films called [Restorative Justice: Why Do We Need it?](#) also provides an overview of restorative justice in relation to the criminal legal system.

▶ Video: <https://www.youtube.com/watch?v=8N3LihLvfa0&feature=youtu.be>

Forms of Restorative Justice

There are many different types of restorative justice processes that allow families, schools, and communities to practice restorative justice in a variety of contexts. Some of the most common restorative models are: Circle, Victim-Offender Dialogue, Prison-Based Restorative Programming, Circle of Support and Accountability, Defense-Initiated Victim Outreach, Truth and Reconciliation Commissions, and Family Group Conferencing. Restorative Community Conferencing is also a model that will be discussed in the following section, **1D: Restorative Justice Diversion**. Each model is described below:

Circle

Circles are a ceremonial and intentional way of gathering where everyone is respected, folks get a chance to speak and listen from the heart, and stories are shared and valued. Circles can be used to make collaborative decisions, address conflict, celebrate achievements, and for many other purposes. Key elements of a circle process are ceremony, community guidelines, a talking piece, the presence of a circle keeper or facilitator, and consensus decision-making. For more graphics and handouts explaining the circle process, please visit the [Living Justice Press site](#). Additionally there are many excellent films about restorative justice and circles, such as [Circles](#) about restorative justice in Oakland; [Hollow Water](#) about how restorative justice helped the Ojibwe indigenous community in Canada heal from a legacy of sexual abuse, and a short video below,

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[Restorative Justice in Oakland Schools: Tier 1. Community Building Circle](#) that demonstrates a circle process led by Oakland youth.

▶ Video: <https://vimeo.com/208337380>

Victim-Offender Dialogue

Victim-Offender Dialogues (VODs) bring people harmed and the people who harmed them together for a facilitated, face-to-face meeting. The process is initiated by the person harmed after the person responsible for the harm has been charged and processed through the criminal legal system and subsequently incarcerated. Most often, VODs in crimes of severe violence take place inside a prison several years after the case has been legally resolved. The film [Beyond Conviction](#) tells the story of three people harmed who seek answers and healing through a victim-offender conferencing process in Pennsylvania. Note: see the [About](#) section where we explain why we don't use the terms 'victim' or 'offender.'

Prison-Based Restorative Programming

Prison-Based Restorative Programming can include victim impact or dialogue groups where an incarcerated person can find creative and symbolic ways to heal and make amends. Some examples of innovative prison-based restorative programming include The Ahimsa Collective's Realize Program, which applies restorative approaches to intimate violence, and the Insight Prison Project's Victim-Offender Education Group.

Circle of Support and Accountability

[Circles of Support and Accountability \(COSA\)](#) provide folks recently released from incarceration with a network of community volunteers who provide guidance, care, and support to help them face the many challenges of returning home.

Defense-Initiated Victim Outreach

[Defense-Initiated Victim Outreach \(DIVO\)](#) is a restorative justice process used during litigation. To meet some survivors' needs that may best be addressed through communicating with the defense in criminal proceedings, a DIVO liaison acts as a communication bridge between survivors and defense teams, assisting them by getting answers to their questions and giving voice to their concerns.

Truth and Reconciliation Commissions

Truth and Reconciliation Commissions (TRCS) are traditionally official, temporary, non-judicial, fact-finding bodies sanctioned, authorized, and empowered by the State to investigate harms that have been inflicted upon entire communities. To read more about a vision for truth and reconciliation in the US through a

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restorative justice lens, check out [this interview](#) with Fania Davis, the founder of Restorative Justice for Oakland Youth.

Family Group Conferencing

Family Group Conferencing (FGC) is originally from Aotearoa (Aotearoa is the Māori word for the land now known as New Zealand) and is the basis of the Restorative Community Conferencing (RCC) model you will learn about in this toolkit. The conference brings together a young person who caused a harm, their caregivers/family, the person(s) they harmed, and others (e.g., the police, a social worker, youth advocate, etc.) to discuss how to help the young person take accountability and learn from their mistakes. During the FGC, participants agree on a plan through which the youth can make up for harm they caused. The plan becomes legally binding, and the Department of Child, Youth and Family Services monitors the young person to ensure they complete the plan. **Step 1E: The Evidence** outlines the history and effects of Family Group Conferencing in Aotearoa. [The Little Book of Family Group Conferences: New Zealand Style](#) provides an in-depth exploration of how FGCs work in New Zealand. The documentary [Restoring Hope](#) offers a close look at FGCs as it follows a Māori restorative justice facilitator in Aotearoa who facilitates conferences with people harmed, those responsible, their caregivers/family, and community members.

The restorative justice team at Impact Justice honors and values restorative justice in all of its many flavors and models. We're intentional about the parameters and processes of the RJD model because of our core elements (which you will learn more about in the following **Step 1D: Restorative Justice Diversion**) and the results we have found from RCCs (which you will learn more about in **Step 1E: The Evidence**).

1C CHECKLIST (SEE FULL CHECKLIST ON PAGE 9)

LEARN about restorative justice through reading this section and accessing other resources



READ the [The Little Book of Restorative Justice](#)



WATCH [Restorative Justice in Oakland Schools: Tier 1. Community Building](#)
[Circle](#) and the other films mentioned above about restorative justice



Step 1D

STEP 1D: RESTORATIVE JUSTICE DIVERSION

What is Our Approach to RJD?

Learn what restorative justice diversion looks like in practice including the underlying elements of this model and why each one is so essential.



IN THIS STEP:

RJD Process

RCC Process

RJD Elements

Stories

Checklist

Tools & Resources

As has already been mentioned, we love restorative justice in all its flavors. The spread of restorative justice to more spaces, offering more opportunities for people to heal from harm, is beautiful and necessary. Other models of diversion programs using restorative justice exist, and they should exist! This toolkit, however, focuses on diversion using Restorative Community Conferencing (RCC) guided by a very specific set of practice and implementation elements. We refer to this as restorative justice diversion (RJD). And while there are many approaches to RJD, this toolkit offers an approach with distinct elements and structures that have evolved, been evaluated, and adapted over time. In this section, you will learn more about the structure and elements of our approach to RJD.

Our model of restorative justice diversion is unique. Our approach to diversion in the US uses Restorative Community Conferencing (RCC) rooted in the core elements that are explained below. This model of RJD has been active in Alameda County, California since 2008. The program was first held by [Restorative Justice for Oakland Youth](#) then shifted to [Community Works West](#) in 2010, where cases continue to be actively referred by the district attorney's office today.

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The RCC process was adapted from the New Zealand model of Family Group Conferencing (FGC), which you'll learn about more in **2E: The Evidence**. The FGC model was also adapted by other communities, e.g. in Louisville, KY and in Australia from where it was again adapted in Baltimore, MD. Founded in 2000 by Lauren Abramson, [Restorative Response Baltimore](#) (previously known as the Baltimore Community Conferencing Center) receives cases from community members, schools, school police, city police, the department of juvenile services, prosecutor's offices, and the courts. In Kentucky, [Restorative Justice Louisville](#) was founded by Libby Mills in 2011, and receives cases from the county attorney's office.

What does RJD Look Like?

Restorative justice diversion involves diverting cases that would otherwise result in criminal charges to a community-based organization (CBO) facilitating restorative justice processes. Restorative Community Conferencing is the process used in this model of RJD that allows the person harmed, the responsible youth, caregivers/family members, and community members to come together to discuss what happened, including the causes and impact of the harm. Led by a trained facilitator, this process seeks to identify, repair, and prevent harm based on restorative justice values, which include acceptance of responsibility and meaningful accountability. Together, at the direction of the person harmed, a consensus-based plan is produced for the young person to make things as right as possible by the person harmed, their caregivers/family, their community, and themselves. The young person is supported by their caregivers/family, community members and the facilitating community-based organizations to complete the plan; when the plan is completed, no charges are filed. Below is the **RCC Infographic**, a visual representation that will give you a broad overview of the entire RCC process (based on Alameda County's program).

 [Download Resource: RCC Infographic](#)

For more information, watch Wyatt Cenac's Problem Areas [Episode 09: Research Problems, Reef Problems, Punitive Problems](#) and this [webinar](#) presented by sujatha baliga, Director of the Restorative Justice Project at Impact Justice to learn more about how addressing harm and taking accountability can be meaningful for the person harmed, responsible youth, caregivers/family, and community in this consensus-based process.

The RCC process seeks to honor each participant's dignity and humanity. When a young person goes through an RCC process, the intended outcomes are: needs met, a disrupted cycle of incarceration, and reduced social and fiscal costs. We describe the evidence-based results of an RCC process further in the next section.

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What happens in a Restorative Community Conferencing process?

The RCC process consists of three stages: preparation, conference, and plan. The entire process usually takes 3-6 months to complete. Take a look at the resource below, **RCC Stages**, to understand what happens once a case is diverted by the juvenile legal system and received by the community-based organization. The following is a brief summary of what happens during the process, which is more extensively explained and practiced during our RCC trainings.

↓ Download: [RCC Stages](#)

RCC Stage 1: Preparation

The trained facilitator of a community-based organization separately prepares all of the people directly impacted (person harmed, responsible youth, caregivers/family, and community members) to explore the causes and impacts of the harm before the conference. Prep often takes place over a series of initial contacts and in-depth meetings about the process.

- **Meetings with the responsible youth**

Facilitators first meet with the responsible youth to build a relationship with them and find out if they are willing to be part of a process in which they'll be supported to take responsibility and be accountable for the harm. It's important to do this before meeting with the person harmed to avoid falsely raising their hopes for a conference. These meetings help the responsible youth reflect on their experience and the impact of their actions on the person harmed and the community, and begin to prepare for making things as right as possible.

- **Meetings with the person harmed**

After the responsible youth consents to the RCC process, the facilitator reaches out to the person harmed to build a relationship and help them identify their needs—including their interest in participating in an RCC. The person harmed is not obligated to participate, and they may prefer to participate in only part of the process or opt to have a surrogate take their place for the actual face-to-face conference. They might also not want the RCC or diversion to take place at all in which case the case would likely be sent back to the referring juvenile legal system agency. In-depth meetings are intended to help the person harmed identify what they want to say and ask for during the conference.

- **Meetings with caregivers/family**

Sometimes caregivers/family members will be present for the initial meeting with the responsible youth. Meeting with caregivers/family allows the facilitator to understand any concerns caregivers might have

Step 1D

and learn more about the responsible youth and their support system.

- **Meetings with support people of responsible youth, the person harmed, and community members**

Community members who were impacted by the harm are encouraged to attend the conference in order to share their experience. People who support the responsible youth and people who support the person harmed are also encouraged to attend in order to help bring out the best in both participants, and to possibly take a role in the completion of the plan to repair the harm. These meetings prepare them to share during the conference and support creating a plan.

Most of the facilitator's time is spent in the preparation phase. This phase is crucial because it sets the tone and lays the foundation for all of the other stages to follow. We want people to come into the conference as informed as possible so that they can have as much clarity about their needs as possible before the RCC.

RCC Stage 2: Conference

After every participant is sufficiently prepared during the months leading up to the conference, everyone gathers in person. The goal of this meeting, called a conference, is for everyone to see each other first as full human beings, to discuss the causes and impacts of the harm, ask questions of one another, and collectively create a plan that meets the needs of all in attendance (including the responsible youth). The conference starts with establishing shared values and guidelines. The person harmed identifies who will share their experience first, and others will follow. When the conversation turns to next steps, a plan is created by consensus, and the conference comes to a close.

RCC Stage 3: Plan Completion

The young person takes action to complete the requested items that emerged from the conference. These actions are specific to the harm and demonstrate the youth's efforts in making things as right as possible by the person harmed, their caregivers/family, community, and themselves. Facilitators or an Agreements Manager at the CBO supports the young person with each element of the plan, or, ideally, connects the youth with supports in their own life for each stage of plan completion. When the young person completes the plan, all conference participants and the referring juvenile legal agency are notified, no charges are filed, and the young person's case is closed. A celebration takes place and everyone who was at the conference is invited to attend.

Step 1D

Core Elements of the Model

These core elements not only form the standards and values we bring to Restorative Community Conferencing, they serve as the foundation for our entire RJD model, including everything described in this toolkit about setting up a program. We refer to deviating from these elements as “model drift” or as jeopardizing “model fidelity.”

Attempting to standardize any form of restorative justice is problematic, because, as you read in the [About](#) section, restorative justice in its essence is a fluid way of life. However, developing an RJD program with good intentions but without acknowledging current systems of oppression runs the risk of RJD programs being co-opted by the juvenile legal system or replicating the oppressive structures we aim to dismantle. We offer these elements of the model as a protective structure against RJD programs becoming another arm of the many systems which currently harm or fail to meet the needs of people who come in contact with them. From our years of experience, we have also seen that these elements help hold an RJD program to the basic core values and principles of restorative justice, such as dignity, respect, relationship, healing, and repair.

These are the core elements of our model. The RJD program is...

Element 1: Oriented around the needs of people harmed

Element 2: Designed to end racial & ethnic disparities (RED) in juvenile and criminal legal systems

Element 3: Focused exclusively on pre-charge diversion

Element 4: Structured to prevent net-widening in the juvenile legal system

Element 5: Dedicated to a strengths-based approach to healing harm

Element 6: Rooted in relationships - how to nourish, deepen, and heal them

Element 7: Committed to protecting participant confidentiality

Step 1D

Element 1: Oriented around the needs of people harmed

When harm happens, we know that the person who was harmed is the only one who can say what is needed to repair the harm. As you read in **Step 1B: People Harmed**, the traditional criminal legal system fails to meet the needs of people harmed and can often be re-traumatizing. This program and this model aims to offer people harmed a process where their voices are heard and their needs are met.

In *The Little Book Of Restorative Justice*, Howard Zehr explains:

Of special concern to restorative justice in a criminal justice context are the needs of crime victims that are not being adequately met by the criminal justice system. People who have been victimized often feel ignored, neglected, or even abused by the justice process. Sometimes, in fact, the state's interests are in direct conflict with those of victims. This results in part from the legal definition of crime, which does not directly include victims themselves. Crime is defined as against the state, so the state takes the place of the victims. Yet those who have been harmed often have a number of specific needs from the justice process.

What this element means is that those who've been harmed are indispensable to restorative justice processes, because the person harmed is needed to accurately identify what they need to repair the harm. Survivors also get to decide things that would make them feel safe and supported in the process—including details like the seating arrangement, the order of folks entering the room, and the support people and community members invited. Because a person's needs are dynamic and can change, the RCC process is flexible to meet their needs. The input of the person harmed is fundamental in the creation of the plan to repair the harm.

Element 2: Designed to end racial & ethnic disparities (RED) in juvenile and criminal legal systems

One of the primary goals of our RJD model is ending racial and ethnic disparities (RED) in the juvenile legal system. In the United States and elsewhere, efforts to improve disparate impact of policies on youth of color have often backfired when applied in a uniform way across race. As examples, in Oakland Unified School District and in New Zealand, youth of color have been disproportionately disciplined (OUSD), and incarcerated (NZ). Efforts to reduce school expulsions in Oakland and to reduce youth incarceration in NZ did result in an overall reduction in those harmful practices. However, because they didn't ground their approach in an explicit effort to end racial and ethnic disparities, both OUSD and New Zealand saw a rise in

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RED, even as the overall rates of expulsions and incarceration decreased. Indeed, the relative rate of Black youth in Oakland being expelled and Maori youth being incarcerated rose in relationship to their white counterparts as these policies were implemented. In brief, once alternatives to punishment were available, white youth were given more access to them. When we try to reduce numbers without directly and consciously addressing RED, RED will always increase. RED can only be reduced through explicit, concerted, and sustained effort.

To avoid similar problems as you work to implement RJD in your community, you will be asked in later steps to research and identify which zip codes in your county show a high incarceration rate for youth of color, as well as the crimes for which youth of color are disproportionately arrested. This research will help you determine where your RJD program should concentrate its energy in terms of receiving cases and which kinds of arrests to focus on. This is particularly necessary where the referral mechanism involves any level of discretion; research has shown that regardless of the race of decision-makers, where there is discretion, discrimination is likely to occur.

San Francisco offers a model for ensuring equity in the RJD process. In that community, the CBO and district attorney's office determine which arrest types will qualify for RJD programming. From there, the district attorney (DA) uses a randomized computer selection process to choose which cases will be sent to the RJD program, adjusted to the number of cases the CBO has the capacity to work with. Of course, we'd like all eligible cases to be sent to RJD, but until your organization has the capacity to take all those cases (which could be in the hundreds), randomization eliminates discretion and, therefore, the potential for discrimination in the referral process.

If each step of your work does not reduce racial and ethnic disparities on the pathway to completely ending racial and ethnic disparities, your program is fundamentally disserving both communities of color and the basic tenets of restorative justice. Some might express concern that a focus on ending RED conflicts with being oriented around people harmed. This isn't true. Many survivors are people of color, and many are from communities that are overpoliced and directly impacted by racial discrimination at every step of the criminal legal process. By standing true to core restorative justice values of dignity and respect for all people, restorative justice diversion programs can and should address RED in arrests, incarceration, and in RJD participation while still orienting around survivor needs.

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Element 3: Focused exclusively on pre-charge diversion **Cases diverted to a restorative justice diversion**

program should only be cases that, if charged, would have resulted in the young person being incarcerated or placed on probation. Net-widening occurs when the number of youth being arrested, charged, or otherwise impacted by the system *increases* as a result of a new program or policy. This is an important unintended consequence to be mindful of, as it defeats the purpose of the program, especially when it comes to ending racial and ethnic disparities.

Legal system actors may advocate for diverting low-level cases that would have been dismissed in the absence of the RJD program. In that scenario, young people arrested for low-level offenses are now having more contact with the system simply because a program exists to send them to. As tempting as it may be for RJD program staff to take these cases—especially when it feels like that young person and their family needs *something* to help them—it is essential to avoid widening the net that funnels youth into unnecessary accountability processes or, ultimately, into the juvenile legal system.

It's easier to stay clear on this point when we remember that restorative justice is most effective with serious crimes that have a clear, identifiable person harmed. RJD processes cannot support meaningful connections or accountability, won't satisfy survivors' needs, or reduce reoffense rates for crimes, when there is no clear, identifiable person harmed (as with, for example, graffiti on a highway overpass).

Moreover, RCC is an intensive process designed to address serious harms, and the process isn't appropriate for crimes that are low-level. When the intensity of an intervention is disproportionate to the harm, it can actually lead to an increase in recidivism. Asking a young person or a person harmed to invest months of their time and emotional energy into this process is not something to be taken lightly.

A tool that is helpful in preventing net-widening is our **RJD Case & Program Eligibility Recommendation** memo (downloadable below). This memo outlines the types of cases that are appropriate for restorative justice diversion and provides general information about the scope of RJD in regards to the juvenile legal system.

↓ Download: [RJD Case & Program Eligibility Recommendation](#)

You will need to be firm in maintaining model fidelity around this element by advocating for the diversion of high-level misdemeanors and felonies with a clear, identifiable person harmed. Otherwise, your program is at risk of taking cases that are not suitable for an RJD program because:

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- These cases would otherwise have been dropped
- These cases should not have resulted in an arrest to begin with
- It would result in over-programming a young person and be an unnecessary burden on the time of a person harmed or
- The program has become another arm of the criminal legal system

We've included stories below about what we've experienced when this element isn't upheld.

Element 4: Structured to prevent net-widening in the juvenile legal system

An RJD program should only divert cases pre-charge to minimize the interaction with the system for both the responsible youth and the person harmed. A pre-charge referral means that a case is referred by the DA or referring agency to the CBO after a young person has been arrested and before any charges are filed. Accepting ONLY pre-charge referrals is important for many reasons.

A *post-charge* referral typically means that a young person has already been placed on probation and has had some contact with the system beyond the initial arrest (court, assigned a public defender, etc.). Young people who have had any interaction with the criminal legal system have a greater chance of being system-involved again. Probation violations, not the original harm, are one of the leading causes of youth incarceration in most states in the US. Technical violations of probation often result in pulling youth out of programs. When youth are “given” restorative justice as a part of their court or probation plan, they are likely to make the small “technical errors” that can result in their losing the right to participate or being incarcerated. This sets back their progress and can be harmful and disappointing for the person harmed, who may be invested in the process by this point.

Once youth enter the criminal legal system, the system has authority over their lives, and it is very difficult to disengage from that dynamic. There is an added power that the system now has over that young person, and it can put pressure on them to participate in the program. We do not want a young person to feel coerced or have charges looming over their heads during their experience within the RJD process. While an arrest alone has this impact to some degree, a probation officer, a defense attorney, and court hearings surely exacerbate it.

Additionally, once a young person has been charged with a crime, there is less incentive for them to be vulnerable or accountable in a restorative justice process. They already have an arrest on their record, and having a charge further labels them “a juvenile delinquent” and “a criminal.” Carrying these labels can

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negatively impact their sense of self, which doesn't allow them to show up to the process as their full, best self. When a young person feels coerced to participate by system actors, rather than approached by a restorative justice facilitator as an ally, their apologies may be less robust, and their acceptance of responsibility may come more grudgingly.

Lastly, accepting a post-charge referral places the implementing community-based organization in a position where any advice its staff give to participants may be misconstrued as legal advice, which staff are not qualified to give, unless they are criminal defense, immigration, or child welfare attorneys. Even if they are lawyers, this leads to role confusion; restorative justice facilitators are not legal representatives of the participants involved. Facilitating RCCs post-charge can lead to a number of potential liability concerns for the implementing organization, as well as model drift.

We've included a story below about what we've experienced when this element isn't upheld.

Element 5: Dedicated to a strengths-based approach to healing harm

Although the RCC process primarily involves meeting with people to discuss a harm, the harm isn't the first and only thing that should be talked about. Leading a conversation with any participant in the program by focusing on the harm serves to open a conversation from a deficit point. Whatever harm occurred was likely a negative experience for anyone impacted, namely the person harmed and likely the responsible youth as well. We advocate for approaching interactions with any participant (or any person, for that matter) from a strengths-based perspective by finding out what skills they have or qualities they're proud of. The response to the harm should uplift those strengths.

The current criminal legal system and US society as a whole treats people as bad people if they've done something harmful. As restorative justice advocates and practitioners, we don't believe that anyone is bad nor can they become bad by any actions. We believe it is possible and necessary to hold someone fully accountable without losing sight of their strengths and assets. All of this is part of shifting the narrative from what is wrong with people to what is right with people. Part of working with any participant or partner in this program is getting to know them and their gifts. Remember the words of Bryan Stevenson, who says, "each of us is more than the worst thing we've ever done."

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Element 6: Rooted in relationships - how to nourish, deepen, and heal them

We can't say enough that building, reestablishing, mending, healing, and maintaining relationships is at the heart of restorative justice. Facilitators model this by how they interact with participants in the program. When you meet with the young person, get to know them—their hopes and dreams, what they value, and what they feel good about. Through trainings, you will learn how to do the same with the person harmed. Find out what is important to them. Make getting to know them and their gifts a constant part of connecting with them.

Creating strong relationships with the participants is the bedrock of the facilitator's work. Take time to build trust before discussing potentially uncomfortable or painful experiences with the participants. Eventually you will discuss the harm, but find a way to do so after getting to know them as people. If you don't take time to create a trusting foundation beforehand, you risk reducing people's identities to their relationship to the harm—to that of just a "victim" or "perpetrator."

By establishing strong relationships with the participants, facilitators earn a deeper insight into them as human beings, and into the harm and its impacts. All of this—the relationships built, trust established, and insight gained—allows the facilitator to guide the RCC more effectively. This foundation equips you to reestablish, mend, heal, and/or help to maintain the relationships between participants.

Relationship building (and how you go about it) creates trust and security. Kay Pranis developed her restorative justice circle processes trainings from what she learned from various First Nations' people and the concept of the Medicine Wheel. While the lessons from Medicine Wheels can apply to many different contexts, according to Kay, "Before trying to work out issues or move to action, the Circle Process must first spend time helping participants connect as human beings." Therefore, the first two quadrants of the wheel (the entire first half of the process!) are devoted entirely to building relationship:

- Meeting, Getting Acquainted
- Building Understanding & Trust
- Addressing Vision/Issues/Content
- Developing Plans/Sense of Unity

We can approach RCCs the same way. These four stages will exist at the conference itself, but will also begin in prep. Especially in prep, getting to know each other and building understanding and trust should be

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prioritized. We want to know what folks value, what they like about themselves, what they're interested in, what they want out of this process, what would make them feel whole, what will help them feel their dignity is intact or increased during this process. This is the foundation from which we can talk about the harm, the root causes of it, and its impact on everyone. The first three stages—getting acquainted, building understanding and trust, and addressing the issues—are repeated when the whole group comes together. Only after everyone has shared and gained a deeper understanding of each other and each other's experiences can the group work together to develop a plan to make things right.

Element 7: Committed to protecting participant confidentiality

In order for RJD to be effective, confidentiality must exist on multiple levels within the process. The most concrete and critical measure of confidentiality is through a signed memorandum of understanding (MOU) between the CBO and the DA or local charging authority that clearly states that nothing said during the RCC process, once the case has been referred, can be used in criminal or juvenile court. With an MOU in place, folks can tell the truth at any stage of the process, and none of their statements will be used as evidence in court. Also, the fact that a young person did or didn't opt to participate in the RCC process cannot be used in court. No CBO should accept cases from the juvenile legal system without a signed MOU.

An apology for a crime that a person has been charged with by the criminal legal system is considered an admission of guilt and a reason to enact punitive measures. It is unfair and potentially harmful to ask youth to tell the truth in a restorative process without confidentiality protections in place; without confidentiality legally secured, restorative processes leave people vulnerable to potential legal consequences.

Another reason CBOs must not accept cases without an MOU is that facilitators could be subpoenaed to testify about what they've learned in any stage of the RCC process. In fact, should any participant talk about what happened in the RCC process to someone from the juvenile legal system, without an MOU, that information could be used as evidence against the responsible youth in court. An MOU allows everyone impacted by the harm to speak freely and openly about what happened, without fear that what they say could be used against them or others in court.

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Below is a downloadable version of the RJD Program Overview & Elements that summarizes the elements shared above.

 [Download: RJD Program Overview & Elements](#)

Now that you have an understanding of what our approach to RJD is, in the next step you will learn how we know that RJD works. Step **2E: Common Ground** will guide you in more detail about what and how to share what you have learned about RJD with your legal systems partner. You will notice that several of the documents downloaded in this step will also be needed for **Step 2E** as well.

Stories

NET-WIDENING FOR BUNNIES

A family in a major US city kept an assortment of bunnies, goats, and other pets in their backyard. A 9-year-old child who lived in the neighborhood was, naturally, drawn to them. One day, no longer able to resist the temptation, he went into their backyard, opened a bunny's cage, pet it, and set it free. Upon seeing this, the homeowners called the police on the child, who was then arrested for breaking into the backyard and damaging the bunny cage. This child's case eventually found its way to the desk of the local DA, who diverted it to RJD.

Were the facts of this case severe enough to warrant an accountability process with a four-part plan to repair the harm? Do you think that, had the DA gone forward with charging this case, a court would have put the child on probation? Even if in some jurisdictions the child would have been placed on probation, is RJD the right approach for this case? This last question will be your most challenging to answer.

From **1D: Restorative Justice Diversion**

POST-CHARGE NET-WIDENING FOR POLICE INTERACTIONS

Some legal system agencies have opted to use restorative justice in a post-charge posture (something we think is unwise for reasons stated elsewhere in this toolkit). In one post-charge jurisdiction with

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whom Impact Justice is not currently partnering, a police officer interrogated a child without good reason and the child rightfully decided not to talk to the officer. When the child tried to leave, the officer grabbed her, and she responded instinctively by pushing the officer's hand away. The officer then charged the child with resisting arrest, and she was offered RJD to "repair the harm done" to the police officer.

Would the RJD process be helpful or harmful for a youth in this situation? What power dynamics are at play when law enforcement use an RJD process for this type of alleged harm? How are those dynamics exacerbated when having charges dropped requires apologizing to a police officer?

1D CHECKLIST (SEE FULL CHECKLIST ON PAGE 9)

LEARN about restorative justice diversion through reading this section and browsing other resources



WATCH Wyatt Cenac's Problem Areas *Episode 09: Research Problems, Reef Problems, Punitive Problems*



WATCH the restorative justice [webinar](#) presented by sujatha baliga, Director of the Restorative Justice Project at Impact Justice



REVIEW [Case & Program Eligibility Recommendations resource](#)



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REVIEW [RCC Infographic](#) resource



REVIEW [RCC Stages](#) resource



REVIEW [RJD Program Overview & Elements](#)



Tools & Resources in this Step

A full list of resources can be found on page 127. All resources can be found on rjdtoolkit.org

- [Resource: Case & Program Eligibility Recommendations](#)
- [Resource: RCC Infographic](#)
- [Resource: RCC Stages](#)
- [Resource: RJD Program Overview & Elements](#)

Step 1E

STEP 1E: THE EVIDENCE

How do We Know RJD Works?

Learn about the effectiveness of this restorative justice diversion model as well as other forms of restorative justice.



IN THIS STEP:

Measurements

RCC

RJ Works!

Checklist

Tools & Resources

Earlier steps described the landscape of youth criminalization, the impact of the criminal legal system on people harmed, and introduced restorative justice diversion (RJD). We hope that you're now familiar with the issues and frameworks covered so far. Restorative justice, rooted in age-old practices of indigenous communities as a relationship-oriented, non-punitive response to harm, can be an intuitive process for many who first learn of it. When being first introduced to restorative justice, people often feel a sense of familiarity—that this way of addressing harm is one that folks have already been practicing in many ways, perhaps without using the term “restorative justice.” Whether this is your experience or not, it's still important to look at the quantifiable evidence which supports RJD so we can connect what we know in our bones with what can be measured.

Measuring the success of any diversion program comes down to how participants are impacted by the program and how the program impacts the criminal legal system. Traditional assessments of diversion programs rely heavily on recidivism rates and cost-benefit analyses to measure effectiveness. We maintain

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that restorative justice processes and programs must be measured beyond these considerations (for example, the satisfaction with the process of the participants, or whether family members feel more connected to responsible youth through the process). This step highlights the effectiveness of this RJD model and of restorative justice processes across the globe, and offers resources for continued reading about restorative justice evaluation.

Measuring Restorative Justice

A primary measure of a restorative justice program is whether people harmed are able to express the impact of the harm and make their needs known. Additionally, restorative justice must foster accountability and generate steps for the person who caused the harm to take to repair it. There should be supportive or impacted community members and caregivers present for the process. Above all, throughout the process, the dignity and humanity of all participants must remain intact. Without these components, the program will likely not achieve the level of healing and accountability it is capable of and it cannot truly be called restorative justice.

Said in another way, Howard Zehr writes of restorative justice,

Are the wrongs being acknowledged? Are the needs of those who were harmed being addressed? Is the one who committed the harm being encouraged to understand the damage and accept [their] obligation to make right the wrong? Are those involved in or affected by this being invited to be part of the 'solution'? Is concern being shown for everyone involved? If the answers to these questions are 'no,' then even though it may have restorative elements, it isn't restorative justice.

Restorative Community Conferencing

A report titled, [Restorative Community Conferencing: A study of Community Works West's restorative justice youth diversion program in Alameda County](#) evaluated the RCC program which is the primary restorative practice used in RJD. We strongly encourage you to read and share this report with those in your community who are interested in RJD. The report evaluated the Alameda County RJD program based on analysis of available data from January 2012 through December 2014 and interviews with participants. It revealed many notable findings, including the following:

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- **Satisfaction Among People Harmed**

91% of people harmed who participated reported they would participate in another conference, and an equal number (91%) stated they would recommend the process to a friend.

- **Family Connectedness**

75% of participating youth indicated the process had either a “good” or “big positive” impact on their relationship with their family; 80% of participating parents/guardians reported that their child talked with them more after having completed the RJD process.

- **Lower Recidivism Rates**

Participating youth were 44% less likely to recidivate, compared to similarly situated probation youth: an 18.4% versus 32.1% recidivism rate after 12 months, respectively.

- **Cost Savings**

In 2010 Alameda County’s restorative justice program carried a one-time cost of approximately \$4,500 per case. Today, we estimate that new RCC program costs may rise to approximately \$10,000 per case in the implementation phase, reducing to approximately \$7,000 at scale. It cost over \$490,000 per year to incarcerate a young person in Alameda County in 2018. Given that youth are rarely involved in the juvenile justice system for just one year, the cost savings are tremendous.

A diversion program does not support racial justice and ending youth criminalization if it reinforces racial and ethnic disparities or extends the reach of the criminal legal system. Cases that would otherwise be dismissed or dropped should not be picked up by a diversion program in order to avoid the net-widening effect. Additionally, given the overwhelmingly disproportionate impact and harm the criminal legal system has on youth of color, successful implementation of a restorative justice diversion program will reduce the number of youth of color entering the system. On these fronts, Alameda County’s RJD program produced these results:

- **Reduced Criminalization**

During its first two years, the program diverted 102 youth for crimes that would otherwise have been addressed through the juvenile legal system.

- **Reducing Racial & Ethnic Disparities**

Of the 102 participants in this study, the majority were youth of color; 45% were Black and 33% were Latinx. In 2013, the San Francisco district attorney’s office launched a replication of the Alameda County RJD program in San Francisco called **Make it Right**, which is also operated by Community Works West along with

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[Huckleberry Youth Programs' Community Assessment and Resource Center \(CARC\)](#) An evaluation of the San Francisco RCC program is [still ongoing](#); however initial data show that 32 youth successfully completed the program as of March 2018. The youth who successfully completed the program have a recidivism rate of 16%, compared to a control group that has a recidivism rate of 37%. (In this measurement, recidivism is defined as the filing of a petition in San Francisco.)

As you learned in **Step 1C: Restorative Justice** and **1D: Restorative Justice Diversion**, the Restorative Community Conferencing model is adapted from the model of Family Group Conferencing (FGC) in Aotearoa. A report commissioned by the New Zealand government released in 1988 revealed that institutional racism was leading to Māori youth being disproportionately incarcerated at a drastically higher rate than non-Māori youth, among other disproportionate negative impacts. The government responded with a concerted effort to undo this harm and reduce youth incarceration overall by passing the Children, Young Persons, and Their Families Act of 1989. The Act mandated that restorative justice be used throughout the juvenile legal system, replacing punitive practices with restorative ones. The form of restorative justice that was written into the act is Family Group Conferencing, in which a young person who caused harm is brought into a structured dialogue along with their family, the person harmed, and others (e.g., the police, a social worker, youth advocate, etc.) to discuss the harm and create a plan to repair it. As mentioned in **1C: Restorative Justice** [The Little Book of Family Group Conferences: New Zealand Style](#) and the documentary [Restoring Hope](#) are great sources for learning more about FGCs in New Zealand.

Since the passage of the Children, Young Persons, and Their Families Act, youth incarceration has declined. However, overrepresentation of Māori youth in the system has persisted and even increased. A report titled [New Zealand's Youth Justice Transformation: Lessons for the United States](#), released in 2018, examines why and how these racial disparities endured and offers policy recommendations and lessons learned in response, including:

- The need to legislate limits around arrest and charging
- Diverting as many youth as possible
- Using restorative justice processes for handling youth with more serious cases, and
- Placing those most harmed by the system at the forefront of changing it.

These recommendations align with the restorative justice diversion model described in this toolkit, particularly the call to center those who are disproportionately impacted by the current punitive legal system, which, in the United States, are youth of color.

Restorative Justice Works

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There have been numerous studies demonstrating the effectiveness of restorative justice in many different contexts. Generally, restorative justice has been shown to reduce Post Traumatic Stress Symptoms (PTSS) in survivors, and survivors have reported feeling more included and satisfied by restorative justice processes than the criminal legal system. In addition, while it may seem counterintuitive, restorative processes addressing more serious crimes have been shown to have better outcomes for all parties, including lower recidivism rates for those who've caused harm.

For further exploration into the effectiveness of restorative justice processes, in addition to the Community Works report above, we recommend starting with the following sources and encourage you to seek other sources:

- The [Zehr Institute](#) advocates for restorative justice as a social movement. They share knowledge of restorative justice with practitioners and learners through conferences, webinars, and both in-person and online courses.
- [Restorative Justice: The Evidence](#) is a comprehensive meta-analysis of 36 restorative justice programs conducted in 2007 by Lawrence W. Sherman and Heather Strang, which found that restorative justice:
 - Reduced PTSS among people harmed and related fiscal costs
 - Provided both people harmed and those responsible for causing the harm with more satisfaction with justice than the criminal legal system;
 - Substantially reduced recidivism for those responsible for harm, and
 - Reduced the costs of the criminal legal system when used as diversion
- [Restorative Justice on the Rise](#) is a global virtual network and community of practitioners, academics, students, teachers, and citizens who amplify the movement within, and beyond, restorative justice.

As you dig deeper into studies and resources about restorative justice, keep in mind that restorative justice is not a monolith that can be easily generalized. The design of any restorative justice process will affect the outcomes. The ways to measure restorative justice processes and diversion programs that use restorative justice vary. As you learn more about this restorative justice diversion model and the lessons from New Zealand, share your thoughts and reflections with others in your community who may support the RJD program. Building your RJD program requires a strong foundational understanding of RJD, and in particular, the core elements of the model laid out in **Step 1D: Restorative Justice Diversion**.

Further, as important as it is to develop an understanding of youth criminalization, people harmed, and restorative justice through reading reports and other resources, nothing can replace the deeper understand-

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ing achieved through an interactive learning experience in your community. The next step of this toolkit will explain why this is the case and offer referrals to experiential learning and training opportunities.

1E CHECKLIST (SEE FULL CHECKLIST ON PAGE 9)

READ the report: [Restorative Community Conferencing: A study of Community Works West's restorative justice youth diversion program in Alameda County](#)



READ the report: [New Zealand's Youth Justice Transformation: Lessons for the United States](#)



SEEK other sources about restorative justice, diversion using restorative justice, and diversion in general



Tools & Resources in this Step

A full list of resources can be found on page 127. All resources can be found on ridtoolkit.org

- [Restorative Community Conferencing: A study of Community Works West's restorative justice youth diversion program in Alameda County](#)

Step 1F

STEP 1E: INTERACTIVE LEARNING

How do We Gain Deeper Understanding?

Learning about restorative justice and restorative justice diversion online has its limitations, which is why we ask you gain deeper understanding through interactive learning at trainings. This step directs you to organizations that provide such trainings.



IN THIS STEP:

Pre-training

Hold Circles

What If?

Checklist

The Importance of Receiving Pre-Training

Preparing your organization to implement a restorative justice diversion program requires more than just reading and utilizing this toolkit. In order to be eligible for a Restorative Community Conferencing training from the Restorative Justice Project at Impact Justice ([Step 3: Receive Training](#)), your organization must have already received trainings in restorative justice, circle processes (specifically community building circles and harm circles), and implicit bias. Your organization must also have some experience holding circles in your community. Responsibly introducing RJD to your community requires learning about the history and fundamental principles of circle process and restorative justice, as well as gaining intimate knowledge of how our criminal legal system functions and its history. You learned about this at length in [Step 1A: Youth Criminalization](#), and we encourage you to review the additional resources provided in that step to deepen your knowledge of the criminal legal system.

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Additionally, it is essential to understand implicit bias and privilege—how they inform our interactions with others, as well as how they create and uphold certain practices, policies, and procedures. Developing a program that maintains and sustains a liberation framework can only happen when staff actively and self-reflectively engage with the realities of implicit bias, power, and privilege.

While our list of recommended organizations, associations, and websites is in no way exhaustive, it does provide a great starting point for conducting your own research on where to receive trainings and additional support. Although many of these organizations are California-based, their trainers may be available to travel. Of course, if there is a local restorative justice organization in your community that offers trainings, they could be your best option—both because local trainers cut down on travel costs and because they will have a better understanding of your local community. For more recommendations, visit our [Restorative Justice Resources page on the Impact Justice website](#).

Training in Implicit Bias, Equity, and Privilege

- [Circle Up Education](#)
Designs and facilitates custom trainings in conflict resolution, diversity and equity, restorative practices, and professional development

Restorative Justice & Circle Process

- *The Ahimsa Collective*
Facilitates trainings in restorative justice, trauma healing, facilitation, and restorative approaches upon request
- *California Conference for Equality and Justice*
Provides training and technical assistance for building practitioners' capacity to implement restorative justice practices internally in their policies, practices, and culture, and externally with the communities they serve
- *Community Connections for Youth Institute*
Empowers grassroots faith and neighborhood organizations to develop effective community-driven alternatives to incarceration for youth
- *Community Justice for Youth Institute*
Provides training and technical assistance in restorative justice, peacemaking circles and circle facilitation

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- *Community Works West*
Provides circle training, restorative community conferences/family group conferences, circles of support and accountability (COSAs), restorative arts circles, family transition circles, and train the trainer trainings
- *Eastern Mennonite University's Summer Peacebuilding Institute*
Graduate school that publishes the Little Books of Justice & Peacebuilding series; offers recommended Summer Peacebuilding Institute course, including Circle Process Trainings by Kay Pranis
- *Restorative Justice for Oakland Youth*
Offers education, training and technical assistance, and launches programs with school, community, juvenile justice, and research partners
- *Restorative Justice Training Institute*
Offers training, coaching, curriculum development, research, and evaluation based in restorative practices for schools and youth organizations
- *S.O.U.L. Sisters Leadership Collective*
Offers trainings in peacekeeping circles & restorative justice practices, "S.O.U.L. Model: Best-Practices for Gender-Specific Programming," trauma-informed care, and positive youth development

Juvenile Legal System

Contact your local legal aid center and request a meeting, presentation, or training on your local juvenile legal system and processes.

- *The Annie E. Casey Foundation*
Provides information on state and city juvenile legal system data with the option to create customized reports for your region

Hold Circles

Once trained in restorative justice and circle process, you'll be able to hold circles. Spending time in this facilitation role is essential experience necessary before starting an RJD program. Spend as much time as you need in this step of the toolkit, learning alongside others in trainings and practicing restorative justice in your

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life. The next step of the toolkit helps you determine if an RJD program is truly aligned with your organization's values and mission.

What If...?

WHAT IF THERE ARE NO LOCAL RESTORATIVE JUSTICE GROUPS IN OUR AREA AND WE CAN'T AFFORD TO PAY FOR A NATIONAL ORGANIZATION TO COME TRAIN US?

Let organizations know that you're working through this toolkit with the aim of starting a diversion program, and find out if they have sliding scale prices for trainings. Another option to conserve funds is to send just a few staff members to a training, instead of asking the trainers to come to you, then have those staff members teach it out. A final suggestion is to set up a "training exchange." Perhaps you are a restorative justice organization interested in receiving implicit bias training. Reach out to groups that offer implicit bias training and find out if they would be interested in receiving a training in restorative justice from your team in exchange for one in implicit bias by their team.

WHAT IF WE ARE AN ORGANIZATION THAT OFFERS THESE TYPES OF TRAININGS?

Fantastic, you can check some of these trainings off your list! Now, you can begin to brainstorm how content from your own trainings applies to restorative justice diversion and what supplementary topics you may want to seek training in to further strengthen the foundations of your RJD program.

1F CHECKLIST (SEE FULL CHECKLIST ON PAGE 9)

RESEARCH local, online, and out-of-the-area trainings



REGISTER for and **RECEIVE** trainings in restorative justice and circle processes



Step 1F

REGISTER for and **RECEIVE** training in implicit bias



HOLD CIRCLES in your organization and community



Step 2

2 STEP 2 **Build the Program**

Look for alignment with the model, cultivate relationships with community and legal system partners, and construct the program.



Step 1 helped you understand restorative justice diversion programs, and the context, principles, and structure of these programs. Step 2 will help you determine if the program is a right fit for your organization and will provide guidance on how to have your community shape the program's development and how to build relationships with your local juvenile legal system towards receiving case referrals.

Step 2

STEP 2 SECTIONS:

2A **Program Fit** **PG 64**
Is This RJD Program the Right Fit for Our Organization?

2B **Community Held** **PG 70**
Who in Our Community Might Support this Program?

2C **Community Vision** **PG 77**
How Does Our Community Envision Supporting RJD?

2D **Funding** **PG 84**
Who Will Fund This Work?

2E **Common Ground** **PG 91**
How Do We Work with Legal System Partners?

2F **Referring Cases** **PG 101**
What Kind of Cases Should We Receive?

2E **Receiving Cases** **PG 114**
Are We Ready to Be Trained to Receive Cases?

Step 2A

STEP 2A: PROGRAM FIT

Is this program the right fit for our organization?

Assess whether your organization and this RJD program are aligned, and get to know the roles and responsibilities of staff members necessary to start a program.



IN THIS STEP:

Identity a CBO

Roles & Responsibilities

Site Assessment

What If...?

Stories

Checklist

Tools & Resources

Welcome to Step 2! At this point in the toolkit, you have started to grow your restorative foundation with deeper understanding and hands-on experience being trained in restorative justice and holding circles. In this section, you will determine whether your organization is best suited to start this model of a restorative justice diversion program.

Identifying the Community Based Organization to Lead

The question we're asking you to answer in this section is: "Is This RJD Program the Right Fit for Our Organization?" This is a crucial one to answer. In order to help you determine how well suited your organization is to start this approach to restorative justice diversion, we've created a simple questionnaire based on the program's core elements. You can fill in your answers online below or by using this printer friendly [version of the tool](#).

Step 2A

Complete the questionnaire by reflecting on your organization’s values, mission, staff, history, community, and connections.

Tip!

Including many voices will help you get the most accurate assessment. It’s highly recommended that multiple people at your organization contribute to filling out this questionnaire. You could complete it collaboratively or fill it out separately and share your responses together. Also, adding an RJD program to your existing programming could impact your current staff, so it’s a good idea to include everyone early on.

Once you’ve answered all the questions, follow the instructions to add up your answers, which will tell you whether you have a green, yellow, or red light to move forward.



[Download Resource: Program Fit Questionnaire](#)

Restorative Justice Diversion Program Staff Roles & Responsibilities

Every staff member plays an important role in restorative justice diversion. Take a look at the example of an RJD program organizational chart. This organizational chart is also available as a downloadable resource. We offer this so that, as you’re starting to plan for this program, you can get a sense of the staffing needs for the program.



[Download Resource: RJD Program Org Chart](#)

As you can see, this organizational chart covers the necessary staff roles for a program during the first “pilot” year, as well as staff roles for the program as it continues to expand each year. In the first pilot year, the only necessary positions to establish are two Facilitators/Co-facilitators, a Program Manager, and an Administrative Assistant. Each position has different responsibilities, which are described below. Descriptions of the responsibilities of all the positions beyond the first pilot year are also available in this downloadable Resource.

Step 2A

Big Picture Site Assessment

Later sections of the toolkit will dive deeper into the community landscape, youth criminalization, and system partner support in your geographic location. In the meantime, we've provided a high-level list of criteria for what makes an ideal site for our approach to an RJD program. This list was created to help you anticipate your community's readiness for restorative justice diversion based on the following criteria:

- Presence of an ideal community-based organization to facilitate the RJD program (*this could be you!*)
- Presence of allied systems partners
- Degree of racial and ethnic disparities in youth justice in your county
- Urgent need for restorative justice diversion in your county
- Presence of strong local ally network

Each of these criteria is described in detail, which you can view as a downloadable resource. If you find that your community meets most of the criteria on this list, then your organization should absolutely continue starting restorative justice diversion. If you notice that your community doesn't have certain criteria on this list, especially in relation to the allied systems partners, it means you should prepare for an uphill effort and first focus on supporting community organizing efforts to shift the political power in your community.

Once you've determined whether or not you're best suited to start an RJD program, the next step is identifying who in your community you will be collaborating with, in what capacity, and to what degree they support/understand what you are trying to do. Head on over to the next step of this toolkit which will guide you through the process of building relationship with partners and allies in both the criminal legal system and in your community.

What If...?

WHAT DO WE DO WHEN WE'RE NOT THE RIGHT COMMUNITY-BASED ORGANIZATION TO START THIS APPROACH TO A RESTORATIVE JUSTICE DIVERSION PROGRAM BUT WE WANT THIS PROGRAM IN OUR COMMUNITY?

Don't worry! It's okay that this approach to restorative justice diversion isn't a good fit for your organization. Perhaps your organization could still be involved with restorative justice diversion by providing important services and support for responsible youth and/or survivors. If your organization is already

Step 2A

engaged in advocacy around youth justice or survivors, start the conversation about RJD with your team. This could lead you to finding the right organization to implement the program.

If you'd like to continue moving forward with starting an RJD program in your community in a more formal way, you can go on to the next step: **2B Community Held**. This will guide you through holding focus groups with other organizations and community members on starting an RJD program. If you do this, be sure to make it clear during the focus groups that your organization is **not** the one that will facilitate the program. Use the focus groups to share this resource and plant seeds of inspiration for other organizations that may be better suited to carry the torch of an RJD program in your community.

WHAT IF WE KNOW OUR ELECTED OFFICIALS ARE VERY UNLIKELY TO SUPPORT THIS PROGRAM?

Don't give up! Your district attorney (DA) may have committed to other priorities and implementing an RJD program may not feel aligned with those priorities at this time. That doesn't mean it won't ever happen! Some DAs who were initially completely opposed to restorative justice shifted over time to becoming the biggest advocates for their county's RJD program. It's also possible that someone in the police department, probation department, or another criminal legal department would support the program. You can continue on to the next steps of this toolkit, which will help connect you with other community-based organizations in the field of youth justice and survivor services. These community partners may have information about who else in the system may be open to the program. Building relationships and connections with anyone in the system who supports this program could help encourage your district attorney, or other systems actors, later on.

Stories

MATCHING YOUR VALUES, GOALS AND ASPIRATIONS

In one county, several system partners supported the need for a diversion program, and they approached a community-based organization (CBO) to be RJD facilitators. The CBO did a deep exploration of the proposed program and the necessary relationship with county agencies. They'd never partnered so closely with county agencies before, and needed to determine whether the program format would be in alignment with their organizational mission and values. In that assessment, they realized that to remain true to their values and mission, they needed complete autonomy in their

Step 2A

diversion work; they were concerned with the implications of county agency oversight of the program. This was particularly important to the CBO because they needed to maintain the community's trust, and to know that the information gathered from RJD program participants would remain confidential. Negotiating the CBO's desired level of autonomy took quite some time, and many conversations between the CBO and system partners were required to build the level of trust needed to keep moving forward. But once it was decided by both the system partners and the CBO that the program would have no oversight from any referring agency, the CBO was on board.

As they began implementing the pilot program, the CBO kept a close eye on ensuring that their program participants were treated with care and cultural humility. Early on, the CBO realized that to best address the issues facing their community, they needed to expand their staff size and its diversity. By hiring more staff from the community they were serving, the organization was able to deepen their efforts and commitments to their own core values.

2A CHECKLIST (SEE FULL CHECKLIST ON PAGE 9)

FILL OUT [CBO Identification Questionnaire](#) to determine your next steps in the Toolkit



REVIEW [RJD Program Organization Chart](#) and RJD Program Staff Roles & Responsibilities



REFLECT on how your community aligns with the criteria in the [Big Picture Site Assessment](#)



Step 2A

Tools & Resources in this Step

A full list of resources can be found on page 127. All resources can be found on rjdtoolkit.org

- [Questionnaire: Program Fit](#)
- [Resource: RJD Program Organization Chart](#)
- [Resource: RJD Program Staff Roles & Responsibilities](#)
- [Resource: Big Picture Site Assessment](#)

Step 2B

STEP 2B: COMMUNITY HELD

Who in Our Community Might Support this Program?

Identify other direct service community organizations and organizers that may have a stake in the creation of a restorative justice diversion (RJD) program. Also, identify people in your local juvenile legal system who need to be included in the design and approval of an RJD program.



IN THIS STEP:

Community Landscape	Systems Landscape	System Partner Profiles	PowerMapping
What If...?	Stories	Checklist	Tools & Resources

In order to successfully develop an RJD program in your county, you will need to build relationships and collaborate with a number of partners and allies both in the criminal legal system and in your community. For this reason, it's important to identify who you may need to work with, in what capacity, and to what degree they understand and support what you're trying to do.

In this section you will learn how to create a **community partner and ally landscape** and a **system partner and county leadership landscape**, as well as how to produce a **power map** that is specific to your community. "System partners" are powerful players and potential allies in your county's criminal legal or political systems. Some of them may be elected or appointed officials, so it will also be helpful to create a **system partner profile** for each individual, which contains publicly available information on their constituencies, issue platforms, and involvement on boards or commissions. "Community partners" may be other direct service organizations working with youth, folks that have been harmed or caused harm, as well as

Step 2B


advocacy or grassroots organizing groups, educational institutions, etc. Maintaining a directory list of your community partners will help in developing a robust network of supporters and resources to turn to as you develop RJD in your county.

Tip!

It should be noted that throughout this process, you may experience resistance or concern from some, as well as generous support and assistance from others. Patience and grace should be at the foundation of all relationship building. As you go through this step, always remember some of the foundational beliefs of restorative justice, such as, **inquiry before assumption** and **ubuntu** (“I am because we are”). Just because someone opposes your efforts today does not mean that their heart and mind will not become more open as you build community together.

The following are brief introductions to the **community and system partner landscapes**, **system partner profiles**, and **power mapping worksheets** mentioned above. Complete descriptions can be found on each individual tool’s resource or worksheet page.

Creating a Community Partner and Ally Landscape

 **Download: Community Partner and Ally Landscape Worksheet**

Restorative justice relies first and foremost on relationships, so it’s important to know what organizations and groups in your jurisdiction may be potential partners, allies, supporters, or resources for both your community-based organization (CBO) and the community members with whom you work.

Jurisdiction-wide support for RJD means a lot more than just the implementation of a program. In order for an RJD program to thrive, it needs to be deeply rooted in, and supported by, community. So, just as we encourage community building among individuals, we must also practice it as organizations. This means doing research and getting to know the organizations that are already doing fantastic work with youth as well as getting to know other community members that may align with and support RJD.

Organizations or groups working toward social justice or system change tend to operate under the general categories of *direct service*, *self help*, *education*, *advocacy*, and *direct action*. For more detailed descriptions of these categories, look to the **Community Partner and Ally Worksheet** (downloadable above). An organization may fall under a single category or multiple ones. In any case, the work of social justice and

Step 2B

system change exists along a spectrum—from addressing immediate needs as they exist in current power structures to addressing the root causes that created those needs and organizing to shift those power structures. No single category is better or more important than the other. Bringing about the changes needed to end systems of oppression happens best when allies in each of these categories work simultaneously toward common goals. Identifying which organizations in your community fall into which categories will allow you to create a rich and informative community partner and ally landscape. Though it may seem clear by reading about an organization’s mission statement or vision which of these categories the organization fits into, it’s always a good idea to reach out to folks that work there and speak directly with them about what they do. Not only does this promote relationship and community building, it also allows you to learn more about the beautiful work being done by your neighbors and colleagues and invites you all to dream together of what the future might look like.

This document should help you maintain a directory list of community-based supporters and resources to turn to as you develop RJD in county. You’ll refer back to this list in later steps of the toolkit.

Creating a System Partner and County Leadership Landscape



Download: System Partner and County Leadership Landscape Worksheet

In addition to building relationships with community partners and allies, you should get familiar with your county governance structure. This includes the various system partner offices, departments, and agencies that you’ll be engaging with as you develop your RJD program.

Many counties provide organizational charts on their websites that list governance bodies and the public agencies they oversee, as well as the specific officials (elected and appointed) within those agencies that you may be building relationships, partnering, or collaborating with. To get an even more specific look into your county government, you can visit the websites for individual departments, as they too may provide their own organizational charts that list the names and titles of specific system partners. If you can’t get this information online, consider calling county offices individually, or partnering with folks in your community who may be able to provide this information.

Similar to the community partner landscape worksheet, this document should help you maintain a directory list of system-based influencers as you go about engaging with them to develop RJD in your county. You’ll refer back to this list in later steps of the toolkit.

Step 2B

Create System Partner Profiles



[Download: System Partner Profiles Worksheet](#)

Once you develop your system partner and county leadership landscapes, you can create profiles for each of the system partners and county leaders who will have a role and decision-making power in the rollout of your RJD program. System partner profiles can be used in preparation for a meeting with a partner and to keep track of what level of support or opposition you have from each partner. The profiles, much like your power map, are living documents and should be regularly updated. Additionally, profiles and power maps are typically considered internal documents that can function as tools or guides for planning and strategizing for how to engage with elected and appointed officials. For this reason, discretion should be used in the storage and distribution of these materials.

Power Mapping



[Download: Guide to Power Mapping Resource](#)

Now that you've identified all your community and system partners, it's time to assess the socio-political environment you're operating in. Oftentimes, a discussion of power can be overlooked in restorative justice processes. This is likely because circle process, which many restorative justice organizations use for community building and decision making, is meant to distribute power evenly throughout a group of circle participants. While we are working towards a day in which power is a force for good which moves freely in all directions, power imbalances are very much a part of our current lived realities. It's important to learn where socio-political power is currently concentrated in order to move toward a world where decision-makers can be in "power with" communities, rather than have "power over" them.

With this paradigm shift in mind, we ask folks to approach "Power Mapping" (sometimes called "Power Analysis") from a restorative place, with a focus on relationship and community building. Power mapping is a visual representation of where power is distributed around the issues your group cares about. It is a first step in planning how you can restoratively redistribute power to achieve the change you're working toward.

Now that you've learned how to identify and categorize your community and system partners and allies, it's time to gather information on your local juvenile legal system as well as engage with members of your community and find out what they think of RJD. In **Step 2C: Community Vision**, you'll find tips and tools for

Step 2B

how to best hear from folks in your community and guidelines for what type of data you should gather in order to paint a clear picture of youth criminalization in your county.

What If...?

WHAT IF WE HAVE A HARD TIME FINDING OUT WHO OUR COMMUNITY PARTNERS AND ALLIES ARE?

Reach out to folks at the organizations who you know and ask if they know of other organizations or groups you should learn more about. Ask them which local organizations or community leaders they trust. Additionally, talk to your neighbors! The best sources of information on community are community members.

WHAT IF OUR COUNTY WEBSITE DOES NOT HAVE A COUNTY ORGANIZATIONAL CHART?

Call the offices of your elected or appointed officials and ask them for the names of your key system partners. You can also contact your local high school, community college, or university and ask if any teachers or professors may have students interested in volunteering with your organization and creating a system partner landscape with you.

WHAT IF ANOTHER ORGANIZATION IN OUR COUNTY IS ALSO TRYING TO ESTABLISH A RESTORATIVE JUSTICE DIVERSION PROGRAM?

Consider partnering in your efforts. Counties can often be quite large and it's possible that having a collaborative of multiple organizations providing RJD services will allow for a larger number of youth to be served, especially during the early pilot years (as long as net-widening is avoided). If RJD is provided by multiple organizations in a single county, we recommend that partnering CBOs ensure that each organization focus on serving a different youth demographic (such as designating one program specifically for girls and non-binary youth and another specifically for boys).

Stories

THE PROPER ROLE OF SYSTEM PARTNERS

A university once invited the renowned professor Howard Zehr to give a public talk on restorative

Step 2B

justice. Many system partners attended, who became eager to implement a restorative justice program in their own county. Professor Zehr connected them to Impact Justice's sujatha baliga to provide thought partnership and guidance. sujatha advised them to identify community-based organizations to partner with and lead the development of the program. She also advised that the facilitating CBO must be deeply embedded in the community to be served, and for that CBO to have complete autonomy over the diverted cases.

Many challenges arose, stemming from long-standing, complex relationships between local CBOs and system partners. Over time, Impact Justice's team facilitated a series of dialogues between the county agencies and local CBOs. In these rich, and often challenging conversations, the system partners were strongly encouraged to partner with a CBO which met the criteria found in this Program Fit Questionnaire. Ultimately, these conversations led to building strong, healthy, and clear relationships between system partners and several CBOs. The system partners began to understand the power imbalance that arises when they lead the RJD implementation process and why it's essential for communities to lead the process from the onset. In the end, the system partners worked to find a strong community-based organization to lead the program and the program became a successful, community-led endeavor.

A CHALLENGING POLITICAL CLIMATE

In one county a community-trusted, youth-serving organization had long desired to start an RJD program. Their district attorney, however, was vocally resistant to diversion programs in general—let alone a pre-charge RJD program. During the CBO's five years of advocacy, the DA eventually agreed to divert a single case to RJD. Despite the incredible success of that case (including positive local and national media attention on the story and its restorative justice resolution), the DA remained unwilling to partner with the CBO to divert more cases to RJD.

Knowing that this would be an uphill battle, the organization focused their energy on community coalition building. Coalition building led to the creation of a county-wide racial justice task force that was approved by the county board of supervisors, and support for ending racial and ethnic disparities through diversion prevailed. The conviction, resilience, and advocacy of the community ultimately contributed to the election of a new, progressive district attorney. The new district attorney was deeply committed to ending racial and ethnic disparities in their county's juvenile legal system and looked to the community to support solutions that met the needs of their constituents. This DA was eager to support the implementation of a restorative justice diversion program, and partnered with the CBO to ensure the development of a strong program.

Step 2B

2B CHECKLIST (SEE FULL CHECKLIST ON PAGE 9)

FILL OUT [Community Partner & Ally Landscape Worksheet](#) for creating directory of community organizations and organizers to include in RJD program creation



FILL OUT [System Partner & County Leadership Landscape Worksheet](#) on roles and needs from system partners by adding in the names of your local juvenile legal system staff members



FILL OUT [System Partner Profiles](#) for system partners who will play crucial roles in starting and supporting an RJD program



CREATE a [Power Map](#) for your jurisdiction



Tools & Resources in this Step

A full list of resources can be found on page 127. All resources can be found rjdtoolkit.org

- [Worksheet: Community Partner & Ally Landscape](#)
- [Worksheet: System Partner & County Leadership Landscape](#)
- [Template: Restorative Justice Diversion System Partner Profile](#)
- [Resource: Guide to Power Mapping](#)

Step 2C

STEP 2C: COMMUNITY VISION

How Does Our Community Envision Supporting RJD?

It's important to have community leaders and organizations participate in the creation of your restorative justice diversion program. This step offers guidance on gathering those voices and visions, and helps you start to identify local data on youth criminalization and diversion, so that you can begin to imagine how to customize your RJD program to meet the unique needs of your community.



IN THIS STEP:

Youth Justice

What If...?

Stories

Checklist

Tools & Resources

Restorative justice needs community in order to thrive. At its foundation, restorative justice asks that we honor the humanity, dignity, and agency of all people and that we acknowledge and embrace our interconnectedness in each of our interactions with others. By coming to a collective understanding that harm is often the result of not being in right relationship with others and that justice should be inseparable and indistinguishable from healing, we can achieve not only the ideal environment for restorative justice diversion (RJD) to succeed, but also for the necessary paradigm shift from a punitive system to a restorative one. This is all to say that community—its voice, participation, and support—is of greatest importance before, during, and throughout the implementation of an RJD program. So listen carefully to what folks have to say, with an open heart and a deep desire to connect and understand.

In this step, you will learn how to become even more familiar with the beautiful wisdom that exists in your community. You will also learn about what type of criminal legal system data you should look for in order to paint a clear picture of how young people, particularly youth of color, are being criminalized in your county, and how RJD can best assist in eliminating racial and ethnic disparities in youth incarceration.

Step 2C

Listening Sessions & House Meetings



[Download: Restorative Justice Listening Sessions and House Meetings Resource](#)

In the Restorative Justice Listening Sessions and House Meetings Resource (download above) you will find detailed information on what these meetings are and several tips and guidelines on how to hold them in your region.

Listening sessions

larger gatherings, often open to the public, during which attendees are asked what they know about restorative justice diversion and how they would feel about a program in their community that includes the core elements in this approach to restorative justice diversion

House meetings

smaller, private gatherings that typically happen in folks' homes and are made up of friends and neighbors of the host

Both these meetings offer opportunities for communal learning and dialogue, as well as sharing information about what your CBO is planning and hoping to achieve by developing an RJD program.

Finally, as community and system partner support for RJD grows, and the time for program launch gets nearer, these meetings can provide folks the time and space to brainstorm how they will be involved in their local RJD program (i.e. as community members in Restorative Community Conferences, as local mentors to enrolled youth, as resources or support to program participants, as members of an RJD steering committee or oversight council, etc.).

While these two meetings are different in setting and size, their general goals are typically the same:

1. To raise awareness about what your organization is doing in a manner that builds community and promotes relationship building, honesty, and transparency
2. To ask community members, partners, and allies about their thoughts, hopes, and concerns about restorative justice in general and the possibility of an RJD program specifically, and
3. To accurately record their responses in a way that respects everyone's humanity and dignity, and, when requested, upholds privacy and confidentiality

Step 2C

Local Youth Justice Landscape

Youth Population Data

A much less pleasant, but no less important part of this step, is becoming familiar with the juvenile legal system landscape in your county. This means first learning about the size of the youth population in your county (separated by age and gender). Then, if possible, learn what distinct parts of your county have concentrations of families and youth of color. These distinct areas may be distinguished by zip codes, cities or city/county districts. Gathering youth population data can be done by looking at the [Census](#) or visiting your [local American Fact Finder page](#).

Next, you'll need to identify the person or people in your county who can provide you with insight on: what the local juvenile legal process is; what diversion options may already exist; and who in the criminal legal system may be a supporter or opponent or somewhere in between of RJD. A good place to start is to meet with a juvenile attorney at your local Public Defender's Office or with other juvenile justice lawyers to understand the following:

What happens to children post-arrest but pre-charge

What are the existing diversion programs and policies in your community, and what kinds of rules exist around them, including:

- Types of cases that are accepted
- Referral criteria (# of priors, risk assessment and other tools used, etc.)
- At what stage diversion occurs (pre-arrest, pre-charge, post-charge, etc.)
- Agencies/system partners who make diversion decisions
- Organizations or agencies that facilitate diversion programs

Which system partners might be supportive of RJD and which might be harder to sway

- What state, local, or federal policies, procedures, boards, commissions, etc. you should be aware of

To capture all the information you find on local youth diversion programs, policies and decision-making bodies, refer to the **Local Youth Justice Landscape Programs, Policies and Boards Worksheet** below.

Juvenile Legal Process and Diversion Options



[Download Worksheet: Local Youth Justice Landscape - Programs, Policies, and Boards](#)

Step 2C

Youth Criminalization Data

The final, and perhaps most difficult part of creating a comprehensive juvenile legal system landscape, is gathering information on youth arrest, adjudication, probation, and incarceration/detention data. For the most part, this data is maintained by probation departments, but sometimes it can be found through police departments.

Some counties maintain detailed records on these statistics and are willing and able to share data easily and quickly, while others maintain very inconsistent or partial records. Similarly, some counties are willing and able to share this type of data with the public, while others may limit access or deny inquiries of this nature. This is all to say that you may need to get creative with how you acquire these statistics.

TIP!

If your county is unable or unwilling to provide you with this information, The Burns Institute and the Vera Institute both have national databases on incarceration trends and racial/ethnic disparities in the U.S. juvenile legal system. Another way to identify areas where youth of color are likely experiencing disproportionate contact with the criminal legal system is by looking at school district data on suspension and expulsion rates separated by school.

The following are the general categories of data that you should look for. Whenever possible, this data should be disaggregated (sorted) by race, sex, race & sex, and zip code. When sorting by zip code is not possible, consider other geographical distinctions such as neighborhood or city/county district. To simplify this process, refer to the **Local Youth Justice Landscape Data Worksheet** (downloadable below), where you'll find charts for capturing all these different data sets:

- The most common **misdemeanors** and **felonies** that have an identifiable person harmed, for which youth are **arrested, charged, adjudicated (convicted) delinquent, detained, and placed on probation**
- The most common **misdemeanors** and **felonies** that have an identifiable person harmed, for which youth have the **highest rate of recidivism**
- The zip codes where youth are arrested, charged, convicted/adjudicated delinquent, detained, and placed on probation for crimes in which there is a clear, identifiable person harmed

Step 2C



[Download: Local Youth Justice Landscape - Data Worksheet](#)

Now that you've learned how to engage with members of your community around what their vision of RJD is, you're ready to move on to **Step 2D. Funding**. In this step, you'll find suggestions on how to identify potential funders for your RJD program.

What If...?

WHAT IF OUR ORGANIZATION DOES NOT HAVE THE BANDWIDTH OR CAPACITY TO ORGANIZE LISTENING SESSIONS OR HOUSE MEETINGS?

Use this as an opportunity to build relationships with other community-based or faith based organizations that may already have a base of community members interested in holding these types of events. Similarly, network with faculty and staff at local schools who may have ideas for how to reach out to parent and/or student groups.

WHAT IF WE RECEIVE A LOT OF PUSHBACK FROM COMMUNITY MEMBERS ON THE IDEA OF ESTABLISHING AN RJD PROGRAM?

Be patient and continue hearing folks out. Restorative justice is a term that has become more popular than understood, so there may be confusion or misunderstanding on what restorative justice is and is not. This is an opportunity to build community via circle process and engage in honest conversation on what it means to be truly restorative. When community members are ready and interested in supporting RJD, they will let you know. Always practice being in power with community rather than trying to have power over folks, and remember to take time to identify values, principles, and community agreements before every circle.

Stories

FOSTERING A COMMUNITY PARADIGM SHIFT

In one county, the community came out in full support of alternatives to youth incarceration after experiencing decades of youth criminalization with no real solution. In order to respond to community concerns, a CBO held multiple community meetings focused on health and the impact of criminalization. From these gatherings, the CBO compiled the needs and concerns of survivors and of relatives of

Step 2C

young people who had been criminalized for harms they'd caused. At first, the stories seemed at odds with one another, coming from two separate "sides." But as the impacts of failed approaches to addressing wrongdoing continued to be shared from survivors and people who had been criminalized or otherwise impacted by criminalization, everyone began to find common ground and a common voice. As the conversations deepened, the lines between who was a survivor and who had been been criminalized blurred.

In the gatherings held by the CBO, stories of harm experienced by both survivors and the families of incarcerated youth caused a paradigm shift in the way the community collectively addressed youthful wrongdoing. This shift, from opposition to collaboration and support, fostered the conditions for the creation of a restorative justice diversion program and for a healthier community.

2C CHECKLIST (SEE FULL CHECKLIST ON PAGE 9)

HOLD Listening Sessions or House Meetings in your community



FILL OUT the charts on Local Youth Justice Data



FILL OUT the worksheet on Local Youth Justice Landscape -
Programs, Policies, and Boards



Step 2C

Tools & Resources in this Step

A full list of resources can be found on page 127. All resources can be found on rjdtoolkit.org.

- [Resource: Restorative Justice Listening Sessions and House Meetings](#)
- [Worksheet: Local Youth Justice Landscape - Data](#)
- [Worksheet: Local Youth Justice Landscape - Programs, Policies, and Boards](#)

Step 2D

STEP 2C: FUNDING

Who Will Fund This Work?

Start thinking about funding early. This step offers guidance on how to fund your restorative justice diversion program by pursuing existing value-aligned funders in your area, and it includes recommendations of national funding networks.



IN THIS STEP:

Relationships

Fundraising Plan

What If...?

Stories

Stories

Checklist

Tools & Resources

Start with Relationship

As we've stated in other sections, this work always starts with relationships. When talking about restorative justice diversion (RJD) to potential funders, it's important to first get to know them as people. Gauge their interest in this model of RJD and what impact they could have on the juvenile legal system. When folks invest in the program, they are making a commitment to partner with you in this vision for change. Get folks excited that they get to partner with you in creating the better world that is only possible when we all create it together.

Create a Fundraising Plan

As a community-based organization operating in your county, you may not currently have the staffing or

Step 2D

budget to start an RJD program right now. You should begin developing a fundraising plan early so that you have the staff and infrastructure ready for the next phases of program implementation, including training and case facilitation. Check out the [Foundation Center](#) for resources on how to find grants, write proposals, and learn more about the philanthropic sector.

Your fundraising plan should include:

- **Budget**
- **Fundraising goal**
- **Fundraising methods**
- **Fundraising pitch**
- **List of potential funding sources**
- **Research from your community**

Budget

Determine what the overall operating costs will be for your program. Be as detailed as possible regarding your staffing needs, benefits, overhead costs, travel expenses, supplies, etc. While you won't want to start your conversation with how much money you need, or necessarily even talk money in your first several meetings, having a detailed budget ready demonstrates to potential funders that you've put thought into your operating costs and it will help them (and you) understand your funding needs.

Fundraising Goal

Once you have your budget, you'll know how much you need to raise in order to launch your program. Based on the budget for the program, and additional expenses you foresee (fundraising costs, general operating costs for your organization, etc.), you should set your fundraising goal/target. This goal will guide which types of fundraising methods you use and which grants you pursue.

Fundraising Methods

There are many methods to explore when it comes to fundraising for your program. These include:

- Private foundations
- Government grants
- Individual donor campaigns (fundraising events, letter campaigns, crowdsourcing, etc.)
- Endowments, etc.

We encourage you to include multiple fundraising methods to diversify your funding. Diversifying your funding portfolio will strengthen your program.

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Fundraising Pitch

In the form of letters of interest (LOIs), proposals, and donor solicitations, these documents will be what you send to potential funders to describe the program you're building, your staffing needs, and pilot operating costs. When describing your program to potential funders, make sure to refer to it as pre-charge, for felonies and high-level misdemeanors, oriented around people harmed, and aimed at ending racial and ethnic disparities in youth incarceration. You can also use the provided [Program Overview & Elements](#), [Stages of the RCC Process](#), and the [RJD 101 Powerpoint](#) to help develop your fundraising pitches.

List of Potential Funding Sources

Develop a list of potential funders, including current funders, and new ones to solicit. This list should include how much funding they traditionally give to organizations each year, their deadlines for submissions, what kinds of programming they fund, etc. You can go through the list of Potential RJD Funders to identify private foundations that may fund your program. Keep in mind that this list can only function as a suggestion of potential funding sources, and, we cannot guarantee they are a good fit for your organization or program. You can also check out [Foundation Center](#) online for a comprehensive database of foundations that you can filter based on your programmatic needs.



[Download: Potential RJD Funders](#)

Research from Your Community

This is a good moment to lean on the community you've been developing. Plan to research community-based organizations doing the same or similar work, including youth justice and racial justice organizations. Specifically, research who funds their work. You can often find this information on their websites or their 990s (which are publicly available online). You can also meet with the fundraising officer or leadership of the CBO and pick their brains directly. Chances are they have funding partners who would be interested in funding this work, or may know of donors or foundations you should consider pursuing. It's important to approach those conversations from an "all boats rise with the (funding) tide" approach, letting these other CBOs know you are not trying to replace their programs, but rather co-create a CBO ecosystem in which everyone's work is lifted up.

The bottom line is that you should do your research early and develop a comprehensive fundraising plan for your program. After you create your fundraising plan, it's time to reach out to funders and begin cultivating relationships and interest in your program. Be prepared to engage funders in multiple ways; some funders prefer to talk to you at length before you submit any documents about your program—so be prepared to talk a lot! Other funders will require you to just submit your LOI and budget. Be flexible in how you engage

Step 2D

with potential funders.

Also, be prepared for rejection. The reality is that you will get a lot of funders saying “no” initially. Don’t get discouraged. Sometimes funders who pass on you (for now) pass your name onto other funders, or eventually come back to you when their portfolios have room for you. You will ultimately find people who are eager to fund your innovative work. It just takes time, research, patience, preparation, dedication, and sometimes, a thick skin.

Also, remember that every funder isn’t right for you. If they are passing on you, it may be that their values and vision aren’t aligned with yours. There will be others who are.

What If...?

WHAT IF A FUNDER IS PUSHING TO STRUCTURE THE PROGRAM IN A WAY THAT DEVIATES FROM THE MODEL?

Make sure when building relationships with potential funders that you are providing them detailed resources that explain the model. We offer these resources in this toolkit. Explain to them the importance of the restorative justice diversion model you’re working to implement in your county. Ultimately, with this program and others, you should be careful to not let the funding dictate how you build the foundation of your program or how you implement it.

WHAT IF WE’VE ALREADY STARTED A FUNDRAISING CAMPAIGN FOR ANOTHER PART OF OUR ORGANIZATION?

First, you should consider your organization’s capacity to take on another large-scale fundraising campaign before adding another campaign for your RJD program. You can also try introducing your RJD program to your potential funders to get feelers out there and gauge their interest in funding this new program as well as your existing ones. If you don’t have the capacity to fundraise for your RJD program while also pursuing a fundraising campaign for other parts of your organization, focus on resourcing your existing programs.

WHAT IF FUNDERS THINK THE PROJECT IS TOO RISKY?

Refer back to what you learned in [Step 1E: The Evidence](#). In this section, you will find lots of information and resources on the success and effectiveness of this restorative justice diversion model, especially when compared to the traditional criminal legal system. This information can sway even the most hardened critiques of your RJD program, and funders who require an “evidence based model.”

Step 2D

Stories

A LESSON IN CHOOSING FUNDERS WISELY

In one county, an RJD CBO is funded by a governmental grant. The grant application and reporting requirements focus primarily on numbers—how many youth are receiving the “treatment.” There is no requirement in the grant that the cases be high level, that survivors be present for the restorative process, or that youth of color are included in a way that reflects their system involvement. Each quarter, the CBO staff scramble to complete enough cases to meet grant requirements. When the district attorney offers them cases that don’t align with the core elements—cases that would generally be inappropriate for their RJD program—the pressure to take those cases to meet their grant deliverables is real. This pressure is compounded by the fact that it’s unclear whether the DA in that jurisdiction will charge the cases if they don’t go to RJD.

Compare this with another county, where the majority of the funding for the RJD program comes from the county’s budget for youth wellness programming and a private foundation dedicated to ending youth criminalization. From the start, the funders shared a goal of not net widening, and were in agreement that it was more important to get the right cases than to get a large number of cases, especially as the program was in its development stage. This protected the CBO from pressure to take low-level cases or otherwise inappropriate cases from the DA to impress a funder by proving they did “enough” cases.

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2D CHECKLIST (SEE FULL CHECKLIST ON PAGE 9)

SET a fundraising goal



CREATE a budget



IDENTIFY your fundraising methods



WRITE fundraising pitches



DEVELOP a list of potential funders



RESEARCH local community funders



Step 2D

Tools & Resources in this Step

A full list of resources can be found on page 127. All resources can be found on rjdtoolkit.org.

- [Resource: Restorative Justice Diversion Program Staff Roles & Responsibilities](#)
- [Resource: RJD Program Overview & Elements](#)
- [Resource: Stages of the Restorative Community Conferencing Process](#)
- [Template: RJD 101 Powerpoint](#)
- [Resource: Potential RJD Funders](#)

Step 2E

STEP 2E: COMMON GROUND

How Do We Work with Legal System Partners?

The process starts with getting in touch with folks in your local juvenile legal system departments and will include many meetings in order to establish shared understanding of the program's goals and principles.



IN THIS STEP:

Making Contact

Facilitating Meetings

Stories

Checklist

Tools & Resources

Our intention in this section is to equip you with the resources, tools, and wisdom you'll need to get a meeting with your local district attorney or head of the juvenile charging unit. It's important that they learn from you and talk through what implementing RJD could look like in your community. Moreover, you will need their buy-in as a primary source of receiving cases that would most likely enter the juvenile legal system without your program, and also, ultimately, for making sure nothing that happens in restorative processes can be used in a court of law.

Getting In Touch and Making Contact

Of the many meetings with key actors in the juvenile legal system you'll have in the process of starting an RJD program, the district attorney's office (DAO) is one of the most important. The idea of getting in touch with the DAO might initially feel intimidating, but you can do this in many different ways. The easiest and quickest way is to lean on existing relationships that you or someone you know already have with criminal or juvenile

Step 2E

legal system people. These existing relationships do not have to be with someone working in the DAO—but if they are, that’s great! Having your foot in the door with anyone in the system is beneficial and can expedite this initial phase.

Start Anywhere, Then Network

If you don’t have existing relationships with anyone in the system, don’t fret! Previous sections have offered tools you can utilize for this exact scenario. Take a look at your [System Partner & County Leadership Landscape](#), [Power Map](#), and [System Partner Profile](#) that you created in [Step 2B: Community Held](#). Using those resources, you can begin to identify potential allies in the system who you can start connecting with. Try to start with someone who can help you make connections that will lead you to the DAO.

Once you’ve identified some potential allies in the system and made connections, begin developing a foundation of shared understandings, values, and vision between all of you and the RJD program. The system partner profiles you created can be very helpful for this. They should detail the issues these people care about, and commitments or intentions they made to the public during their campaign or while in office. If a legal system representative hasn’t explicitly voiced interest in restorative justice or even diversion for young people, but has been very vocal about supporting survivors, that’s an in for you! When reaching out to that person, be sure to emphasize RJD’s orientation around survivors and their self-identified needs. The **RJD Program Overview and Principles** below can be a helpful resource for figuring out how to play to both the strengths of the program and system folks’ interests.

[Download: RJD Program Overview & Elements](#)

Use your system partner profiles to find people’s contact information once you feel ready. Keep in mind that this first contact, whether it’s by email or phone, shouldn’t be too information heavy. Your goal in this initial contact should be to schedule a face-to-face meeting where you can share more information in-person. You can always send follow-up supplemental documents after you all meet.

In order to get to an in-person meeting, your email or phone call should:

- Introduce your organization and explain why you would like to meet
- Get to the heart of the ask
- Highlight your shared values and interests
- Provide 1-2 attachments or resources

Based on our experience working with legal system actors, we’ve found these three points about RJD are the most compelling to them:

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1. The success of the program
2. RJD's orientation around survivors and their satisfaction with this model of RJD
3. The cost savings of the program when compared to probation or incarceration

Download: Talking Points for Meeting with System Partners

We detail these three main points in more depth in **Talking Points for Meeting with System Partners**, above. Familiarize yourself with these talking points prior to making initial contact. Reference the points when reaching out to folks while also knowing that you can and should discuss them more in detail once you meet in person. Additionally, watch the video below of sujatha baliga speaking with District Attorney Larry Krasner for a look into how these talking points can be utilized in real time.

 Video: <https://www.facebook.com/watch/?v=1936625629960829>

Meeting in person is always preferred, especially during these initial stages of the process when you are focusing on building relationships and trust with folks in the system. It's also worth keeping in mind that **each person you meet with is a human being deserving of compassion and care**. While your goal is to meet with your local DA, you don't want anyone you meet with beforehand to feel used or any less important. Moreover, almost everyone ultimately plays a role, small or large, in the rollout and sustainability of RJD in your county. The more everyone feels heard and valued, the more care they will put into ensuring the success of the program.

TIP!

Be patient with this process! System folks may not be so quick to get back to your email or return your phone call. That doesn't mean they won't get back to you eventually. Try reaching out to multiple people at the same time to increase your odds of getting a response. Additionally, once you start this networking process, you most likely will hold the same or very similar conversations with many different people, over and over and over again. Just remember that even if the conversations seem repetitive and tedious to you, this information is probably brand new to whoever you're talking to and could be incredibly exciting or potentially difficult for them to grasp. To the best of your ability, try to approach each new conversation or interaction with enthusiasm and care.

Facilitating Meetings & Sharing Resources

Congratulations! You have a meeting scheduled with a point of contact who works in, or is connected to,

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your local criminal or juvenile legal system. Before your meeting, make sure you know exactly who will attend, the length of the meeting, how much time you need to talk and present, the type of meeting, and your goals for the meeting. Using the **Meeting Agendas and Activities** resource below, you can start to gain insight into the different types of meetings you may experience, what to prepare beforehand, and what resources to bring to each meeting.



Download: Guide to System Partner Meeting Agendas and Activities

This resource includes important tips and strategies for creating agendas when meeting with system partners, such as:

- Understanding who will be leading the meeting, how long it will last, and the POP (Purpose, Outcomes, and Process)
- Knowing who will be in your meeting
- Tailoring your agenda to your audience and their role in supporting RJD, based on your attendee research (and system partner profiles, when applicable)
- Limiting the number of agenda items to no more than four to six per hour of meeting time

Additionally, this resource provides sample agendas for the following types of meetings you may have with system partners:

- Introductory or relationship building meetings
- Presentation or informative meetings
- Strategy or problem solving meetings
- Working or work group meetings
- Finalization, announcement, or celebration meetings

In this initial phase of connecting with system folks, you will be living in the “introductory or relationship building meetings” and sometimes (most likely later on) in the “presentation or informative meetings” arena. Both are extremely important and extremely different, so make sure you know which type of meeting you’re walking into! After each meeting, find out if there are additional people you can reach out to, such as others who would be interested in supporting RJD and have more direct relationships with the DAO.

Ultimately, every single person you will talk to has either been elected or reports to someone who was elected to serve and represent the people of your county. Whether or not you agree with their approach, those who work directly in the criminal or juvenile legal field have been tasked with ensuring the safety of everyone in your county. In asking for RJD, you’re effectively asking these officials to relinquish a part of their responsibilities to a community-based organization. It’s a dance—you want to demonstrate respect for their

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important role in their county, while also kindly and compassionately showing them a different way to support youth and people harmed.

A resource we've found to be really helpful for this framework is the [21 Principles for the 21st Century Prosecutor](#) released by [Fair and Just Prosecution \(FJP\)](#). FJP is a network of newly elected local prosecutors "committed to promoting a justice system grounded in fairness, equity, compassion, and fiscal responsibility." Using real examples and experiences from innovative prosecutors across the nation, this report offers prosecutors practical steps to transform their office and county. We strongly encourage taking a look at this report and FJP in general, as they can be useful reference points and beacons of insight when thinking about how to frame and engage in conversations with system partners.

This section of the toolkit has several additional resources that will be helpful for you to read when preparing for meetings with system partners *and* to distribute to system partners as you continue to garner trust and interest in RJD. Familiarize yourself with them and trust your instincts for when it feels right and necessary to share and utilize each resource, while keeping in mind that folks probably won't read through every single thing. So rather than sending them all at once, pick and choose which ones to highlight at different stages of the process. Below are brief snapshots of the remaining resources this section has to offer:



[Download: RCC Infographic](#)

This graphic shows what the RJD process looks like specifically in Alameda County, California, from the moment when a young person causes harm and gets arrested to the point of RJD plan completion. Since the process is very dynamic with a lot of moving parts, we've found this way of visually representing the process very helpful to walk through with folks as you are envisioning what it could look like in your community. Keep in mind this infographic is specific to Alameda County's juvenile legal procedures and that the points of referral vary based on jurisdiction.



[Download: RCC Stages](#)

RCC Stages gives a more detailed and focused look at what an RJD facilitator is responsible for at each stage of the process. You may find this to be a good supplemental resource to share or, if it feels too in the weeds for this initial stage of system partner meetings, share it later. Still, it's always helpful to familiarize yourself with all the stages and steps of an RCC process.



[Download: CWW report](#)

This report demonstrates the benefits and effectiveness of the RJD program in Alameda County housed at Community Works West (CWW). The RJD program in Alameda County is the first of its kind and scope to address youth crimes in a major US urban area, working solely in a pre-charge context,

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and with an explicit goal of ending racial and ethnic disparities. The report is based on analysis of available data from January 2012 through December 2014. Some of the evaluation's highlights include:

- Reduced criminalization
- Lower recidivism
- High satisfaction among people harmed
- Family connectedness
- Cost savings
- Reducing racial and ethnic disparities



Download Template: RJD 101 Powerpoint

This powerpoint template may be useful when you do more formal presentations to folks on basic overviews of restorative justice and RJD. This should serve as a guide, but please make it your own. You will notice in the notes for each slide, that italicized text is what we suggest saying out loud, while the rest includes tips, reminders, etc. for your use.



Download Resource: Case & Program Eligibility Recommendations

The memo above outlines the types of cases that are appropriate for restorative justice diversion and offers general information about how the RJD program works. This memo can be sent to referring agencies with the understanding that details will be discussed as you collectively determine the best approach for the technicalities of taking on cases from their office.



Download Resource: 6-year RJD Program Growth

This document describes the first six years of the growth of an RJD program. Each time a community-based organization (CBO) is ready to move to the next phase, it must consider the staffing and funding required to keep up with program expansion. It's useful for CBOs and system partners to all have the same understanding of what sustainable scaling of this program looks like over the next few years.



Download Template: Two-Way Expectations of CBO/SP

This resource lays out the commitments and expectations involved in maintaining an RJD program between the CBO and system partners. It details what per-implementation and post-implementation expectations are for:

- RJD community-based organization
- State's attorney/district attorney/prosecuting attorney
- Juvenile division chief in the district attorney office
- Presiding judge of juvenile court

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- Public defender
- Chief of probation department
- Chiefs of police departments
- County board of supervisors
- Victim advocate in district attorney office

As you meet and build relationship with folks in each of these departments, it's generally helpful for everyone to have the same baseline understanding of what is expected of them throughout this process. Even if you don't end up meeting with someone from every department on this list, as the program begins ramping up and garnering more attention and enthusiasm, more people and departments will want to be involved. You may find this document useful to point to for departmental role clarity.

TIP!

Coming to your meetings with folders of resources is always a nice thing to do. Your folders should contain a mix of RJD resources and resources about your organization, your team, and you specifically! Be sure to slip your business cards in there as well. Even if you get a headcount of everyone who will be in the meeting or presentation, it's always useful to bring extra materials just in case. Additionally, we've found it useful to hand the folders out *after* the content portion of our meeting or presentation was over. We've found that doing it this way ensures you have folks' full attention while you are speaking rather than tempting them to rustle and read through all the incredible resources you provided.

TIP!

After any meeting you have, even if it's incredibly brief and doesn't lead you any closer to the DAO, it's important to write a follow-up. These follow-up emails are a good opportunity for you to thank your new connections again for their time and energy, send them soft copies of any resources you already provided and any additional resources that may be helpful or relevant to your discussion, and gently remind folks of who they promised to connect you with.

Building relationship, trust, and a deeper understanding of what an RJD program can offer your community is a crucial piece of this process and makes space for your DAO to express any type of interest or buy-in in this program. Once that has happened, you'll be able to dive deeper into what this program will actually look like in terms of case types, referral process, eligibility criteria, etc. Head on over to [Step 2F: Referring Cases](#) to gain a deeper understanding of how to navigate the next steps of implementation.

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What If...?

WHAT DO WE DO IF WE’VE TRIED EVERYTHING AND STILL HAVE NOT HEARD BACK FROM ANY SYSTEM PARTNER POINTS OF CONTACT?

Don’t give up! See if you can gain access to any local official’s public calendar and see if they are doing a public event. If so, make an effort to attend and see if you can wait around to speak to them or someone on their staff directly. If you can’t seem to find anyone’s calendar directly, you can always see if anyone in your community or network of organizations may be hosting or attending an event that a local elected official may be attending. There’s always a way to get your foot in the door, even if it means starting your process with someone even further removed from the DAO than you originally anticipated.

Stories

THE SKEPTICAL DA CAME ROUND

After a DA received an email from the presiding judge of the juvenile division asking him to come learn about restorative justice, he thought to himself, “Here we go again, everyone thinks they know better than we do...” Out of respect for the judge and a sense of duty and protocol, he replied to the email saying that he would attend. During that first meeting, he was intrigued by the notion that youth would be encouraged to take responsibility for the harm they caused. In the weeks that followed, he was impressed that the restorative justice advocates reached out to meet with him individually and to ask him questions like: What about his current job was and wasn’t working for him? What he would need to be able to support the development of an RJD program? He admitted he was tired of speaking with “angry, dissatisfied crime victims,” and he was impressed with the idea that RJD involved youth being directly accountable to survivors’ self-identified needs.

In those initial conversations, the presiding judge of the juvenile division quickly handed over facilitation of the meeting to local CBO staff who were grounded in restorative justice practice and facilitation. These meetings gave people the opportunity to share their frustrations with the current system of justice, to find shared strengths and interests, and to stand on common ground. Often the DA and the public defender would joke that this was the only meeting in which they’d sit next to one another.

Because many attendees expressed appreciation for these meetings, the judge convened a county-wide restorative justice task force, which met monthly. The DA attended all of these meetings, eventually attended multiple restorative justice trainings, and read foundational texts about restorative justice. This DA began regularly saying that the juvenile legal system was out of date and generated poor

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outcomes, and that he preferred community members to take the lead on helping youth in conflict with the law. He cared deeply about people harmed and saw that the criminal legal system failed to attend to their needs the way restorative justice processes did. It took him a while, but when he truly understood the philosophy and practice of restorative justice, he became a champion for it.

THE RESISTANT BUT NON-OPPOSITIONAL PROBATION OFFICER

In one jurisdiction, the creation of a pre-charge felony diversion program for youth required the approval of the chief of probation. He was initially opposed to the idea that any child in conflict with the law could resolve the harm without probation supervision. In the first meeting to discuss the possibility of a pre-charge RJD program, he made it very clear that he had had negative experiences with restorative justice trainings in the past (“I’ve been on the RJ merry-go-round before”). The RJD advocates didn’t take this as a closed door. Instead, they met with him several times, allowing him to vent about the failures of decades of “newfangled” approaches to addressing youth crime, before moving into helping him see why the proposed approach to RJD attended to many of the things he was legitimately angry about. While he never became a “true believer,” these conversations led to him getting out of the way of the program proceeding without probation supervision.

2E CHECKLIST (SEE FULL CHECKLIST ON PAGE 9)

READ FJP’s 21 Principles For The 21st Century Prosecutor report



ESTABLISH CONTACT with someone in the criminal and/or legal system



PRESENT RJD 101 powerpoint to potential system partners



Step 2E

ESTABLISH CLARITY and **UNDERSTANDING** of roles and expectations between all potential system partners and CBO



RECEIVE informal buy in from DAO



Tools & Resources in this Step

A full list of resources can be found on page 127. All resources can be found on rjdtoolkit.org

- [Resource: RJD Program Overview & Elements](#)
- [Template: RJD 101 Powerpoint](#)
- [Resource: Potential RJD Funders](#)
- [Template: Talking Points for Meeting with System Partners](#)
- [Resource: Guide to System Partner Meeting Agendas and Activities](#)
- [Resource: RCC Infographic](#)
- [Resource: RCC Stages](#)
- [Resource: CWW report](#)
- [Resource: Case & Program Eligibility Recommendations](#)
- [Resource: 6-year RJD Program Growth](#)
- [Template: Two-Way Expectations of CBO/SP](#)

Step 2F

STEP 2F: REFERRING CASES

What Kind of Cases Should We Receive?

Create the eligibility requirements for cases and establish shared expectations with system partners going forward. Set up pre-charge referrals from the juvenile legal system to your restorative justice diversion program.



IN THIS STEP:

Identify Data	Program Eligibility	Referral Process	Legal Documents
What If...?	Stories	Checklist	Tools & Resources

Coming off Step **2E: Common Ground**, hopefully you've begun meeting with folks at the DAO and have some sort of informal buy-in from them for this program and what it could look like in your community. That is amazing and is a feat in its own right! You are building something HUGE from the ground up, so don't forget to celebrate yourself at every step of the way.

Now that you've garnered their interest, we suggest building on this momentum. Up until this point, your conversations on RJD should've been more big picture and focused mostly on building relationship and trust. Once you've built that solid foundation, it'll be a lot easier to move into more of the details and minutiae of what this process is going to look and feel like in your community. This section should help you understand how to start identifying and building out the **eligibility criteria** and **referral process** to determine what cases can and should be diverted and what that process will look like internally.

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Identify Current Data

As you well know, RJD is intended to create accountability to survivors' self-identified needs, while also ending racial and ethnic disparities in the juvenile legal system. Therefore, the types of cases that are ideal for diversion are those with a clear person harmed and those crimes which most often result in young people of color being incarcerated or placed on probation. To ensure this is the case, we use data to inform the eligibility criteria of the young people who will be referred to RJD. Most likely the DAO or another closely related agency such as probation holds the data you need for this process.

[Download Worksheet: Local Youth Justice Landscape - Data](#)

The specific data you need for this process can be found on your **Local Youth Justice Landscape - Data** worksheet from **Step 2C: Community Vision**. Using your previous research, you should already have an idea of what the county data is going to look like, but it's always important to get the numbers directly from the county too, if available. Download a clean copy of the worksheet and use the county numbers to fill out:

- The current population of youth in your county (ages 10-18) broken down by race and sex
- The top 10 misdemeanors *and* felonies youth (ages 10-18) are *arrested* for that have an identifiable person harmed, broken down by race and sex of the youth
- The top 10 misdemeanors *and* felonies youth (ages 10-18) are *charged* with that have an identifiable person harmed, by youth's race and sex
- The top 10 misdemeanors *and* felonies youth (ages 10-18) are *convicted/adjudicated* delinquent for that have an identifiable person harmed, by youth's race and sex
- The top 10 misdemeanors *and* felonies youth (ages 10-18) are *placed on probation* for that have an identifiable person harmed, by youth's race and sex
- The top 10 misdemeanors *and* felonies youth (ages 10-18) are *detained* for that have an identifiable person harmed, by youth's race and sex
- The top 10 misdemeanors *and* felonies that have the *highest rate of recidivism* for youth (ages 10-18) and have an identifiable person harmed, by youth's race and sex
- The top 10 zip codes from where youth (ages 10-18) are:
 - Arrested
 - Charged
 - Convicted/adjudicated delinquent
 - Detained

Step 2F



Download Worksheet: Local Youth Justice Landscape - Programs, Policies, and Boards

Additionally, you'll want to refer to your **Local Youth Justice Landscape - Programs, Policies, & Boards** worksheet, downloadable above. At this point, your focus should be on the existing diversion programs in your county, if any exist. Work with your system partners to fill in whatever missing information you may have. Specifically, you want to know:

- Which of these offenses are diversion eligible for already existing pre-charge diversion and post-charge diversion?
- If they have pre-filing diversion, what percentage of pre-filing diversion eligible offenses are diverted?
- What is the referral criteria for existing pre-filing diversion programs (# of priors, types of priors, age of youth, and other limiting criteria)

Obviously, this is a *lot* of information. We've had a wide array of responses from system partners when it comes to their willingness to share their data. Some folks have been very eager to share their data, while some feel neutral about it and others are resistant to the idea. We've even done work in jurisdictions that don't have a centralized place for storing their county-wide data. Additionally, we've had a similar array of responses when it comes to analyzing the data.

TIP!

In the spirit of transparency, sharing a copy of both worksheets (that are blank!) with the folks you are working with can be helpful for them to visually see what you are asking for and where the ask is coming from. Often people are asking for data to sue county entities, or to show that the system has erred or failed. Being *overly* communicative and collaborative during this process in particular can also be helpful since it can be a sensitive subject. You may want to ask systems folks if they want to fill out the Landscape worksheets together or schedule a meeting once you have mapped it out yourself.

If you're finding yourself in situations where system partners are resistant to share their data, try to figure out where that hesitancy is coming from. Is it because it may be a lot of work for them to compile it all? Or maybe they don't want to share their data with someone outside the system? The data will most likely show stark disparities across racial and ethnic lines. In some cases, this can be really hard for staff within the DAO to face. Again, it's important to remember that this is not an opportunity for you to expose the shortcomings of the criminal legal system or to cast blame on any group of people for these disparities. We know the underlying cause is systemic. Rather, you'll want to find a way to align with your partners and let them know

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you are not going to use this data for a “gotcha” moment of what’s wrong with the system or with them. Instead, show them you are approaching it with the point of view of “we know your hands are tied because your process isn’t resourced to...” Sometimes it’s just a matter of ‘flipping the script’ on how you present information so that it’s more digestible and relatable. If they had a pretty positive response to the seven principles of RJD and the **2-Way Expectations of CBO/SP** document (downloadable below) you shared in previous meetings, you can also always point back to that shared expectation, and remind them that the data is necessary for everyone to understand whether the program will be successful in fulfilling its principles.

 [Download: Two-Way Expectations of CBO/SP](#)

TIP!

All of the juvenile legal data you need for your county may be held in multiple agencies across the system. Being able to identify in advance where all this data is held and how many different agencies you’ll need to contact can save you a lot of time and energy in the long run.

This information may come out in one or many of your meetings with different agencies as you’re building trust and relationship around RJD. It’s also a discussion that can come up as you’re reviewing the **Two-Way Expectations of CBO/SP** template from [Step 2E: Common Ground](#). If not, you can always ask directly. And remember to get a feel for who you will need to spend extra time building relationship with by reviewing the roles and needs from the **System and County Leadership Landscape** worksheet in **Step 2B: Community Held**.

Identify Program Eligibility Criteria

With all the information and data in front of you, you can start identifying potential RJD cases! We suggest having some sort of grasp on what the data in front of you means before you meet with the DAO. You might have some idea of what cases you want to be diverted but find that the DAO may not feel comfortable with the severity of crimes you’re focusing on or with the optics of what you have in mind. So make sure you understand what ultimately is and is not a good case for diversion. You also want to be careful about selecting cases that would otherwise be diverted to another existing diversion program. Those are *not* the cases you want for RJD.

 [Download RJD Case and Participant Eligibility Worksheet](#)

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From our experience, figuring out the appropriate eligibility criteria and referral process with the DAO has been a sort of informal back-and-forth conversation where we say “here’s what looks ideal” and then the DA pushes back or agrees. These meetings can move at a fast pace and can even be a bit intimidating at first. Our **RJD Case and Participant Eligibility** worksheet, downloadable above, can be a great visual and accessible way to capture these conversations on paper. The worksheet maps out what the criteria for youth who are diverted will be. It covers:

- What types of cases and arrest types will be referred (ensuring that it aligns with the data, RJD program principles, and DAO comfort level)
- How many (if any) prior charges (the number or the type) will disqualify a young person from being referred (remember! studies show that youth who reoffend are most successful in the RJD program. So you should push for this not to be a “first time offender” program)
- Whether dependency-delinquency youth (aka crossover youth) are eligible for referral
- What the age range of youth who cause harm will be
- What zip codes cases will be diverted from (remember! These should be zip codes of high arrest rates and high levels of racial and ethnic disparities)

 [Download: RJD Case Referral Criteria Checklist](#)

Once you’ve filled out the **RJD Case and Participant Eligibility** worksheet, feel free to cross-check it with the RJD Case Referral Criteria Checklist, found above, and also to add any and all additional criteria you’ve outlined to that checklist. The checklist can be a helpful resource for both the DAO and you to ensure that the cases that are being identified and referred align with the criteria you all decided on together.

A Note On Discretion

Using data to inform the program eligibility criteria satisfies both RJD core principles and also helps limit the DAO’s discretion around who gets offered diversion and who doesn’t. Studies show that despite the fact that youth of color are *overrepresented* in the criminal legal system, they are actually *underrepresented* in diversion programs. We want to make sure RJD doesn’t replicate this dynamic, and one way we do so is through limiting the DAO’s discretion.

Talking about reducing the discretion of the DAO is a very delicate topic. It is our experience that discretion is really important to folks who work in the DAO, regardless of how they use it. Some system partners use their discretion to impose even more punitive outcomes on people and others use it in the opposite way. Either way, the idea of limiting the DAO’s discretion should be navigated delicately.

A perspective we’ve used for a DA who actually wanted to use their discretion to send more serious, direct

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file cases, was by explaining that if the program is dependent on complete DA discretion, as the program continues to expand and receive a large volume of cases, that is going to result in a *ton* of work for the DA's office. It is also helpful to be able to point to the numerous studies that have shown that, whenever there is more discretion, there is *always* more discrimination, even when policies are implemented in a "race neutral" way. We absolutely want to avoid situations where DAs can look at each case as it comes in and decide whether they think the youth is "good" or "worthy" or "amenable" to diversion based on nothing else but their own impressions off a case file. Implicit bias *always* comes into play here regardless of how reform minded or anti-racist your DA may be. Relatedly, we also shared with this specific district attorney that as much as we love them and their politics and wish they could be in office forever, there will come a time when they are no longer in office. With that in mind, it's necessary to implement more standardized protocols and procedures so that the program's success and the cases referred don't depend on the character of the current DAO.

Create Case Referral Process

Creating a discretion-less referral process can be hard to do for the reasons listed above, but can be especially hard to do during the early stages of RJD implementation. In order to ensure the sustainability of the program, the number of cases referred should be explicitly based on the capacity of the CBO. In our experience, only 15 cases should be referred to the RJD program if there are two full-time facilitators (the scaling is detailed further in the **6-year RJD Program Growth** worksheet, downloadable below). If RED and mass criminalization of youth of color are prevalent in your county, then the eligibility criteria you and the DAO create will more than likely result in diverting exponentially more young people than just 15 a year. Because of this, you want to find a way for the DAO to refer only 15 cases from that larger pool of eligible cases, without giving the DAO complete discretion.



[Download: 6-year RJD Program Growth](#)

There are plenty of ways to do this, so feel free to get creative with your system partners in coming up with a process that feels good for everyone. When thinking through a process, here are a few things to consider: You don't want the DAO to just refer the first 15 eligible cases that come across their desk because that could mean receiving 15 cases in the first month of the program. You want to find a way to limit discretion while also keeping the success and sustainability of the program in mind. Whatever process you come up with shouldn't be permanent. It should be able to evolve (and potentially disappear altogether!) as your organization's capacity increases.

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Existing Examples

In one of our sites, the DAO uses a free randomization tool to determine which youth get referred and which youth don't. At this site, the charging juvenile DA receives a case, makes a charging decision and if they decide this is a case they would *absolutely* charge, and it fits all the county's eligibility criteria for the program, they send the case over to their legal secretary. The legal secretary uses the randomization tool (which is effectively a piece of paper that says "control, test, control, test, control, control, etc.) to determine the next steps. The randomization tool is adjusted based on capacity of the CBO. Because the CBO can only take a certain number of cases per year, the tool's algorithm is structured to match that. For example, the CBO can only take 25 cases a year so for every 10 cases that the tool works with, it will randomly select 7 out of those 10 to divert to the CBO.

Using this computer generated randomization tool ensures less discretion and also helps prevent net-widening. Since the charging DA has no idea if the computer will refer the case or not, they have to be absolutely sure this a case they would take to court before sending it to their legal secretary. That way, if the computer decides to charge the case, they are ready to take it to court. Another added bonus of this method has been that at the earlier stages of the program using the random generator has inadvertently given the program a generated match sample of cases to compare the RJD process to, in order to measure for recidivism and other measurements of success.

What we've learned through this site's process, however, is once again the importance of including ending RED in the eligibility criteria process. Because that was not explicitly done in this site, the randomization tool has resulted in RED actually increasing. Further, we've learned the importance of creating a plan to move away from this process in the future. There should be no reason to exclude youth who are perfectly eligible for the program once your program has the capacity to receive them.

Another site found a way to limit case referrals in the early pilot stages by creating more narrowly-focused eligibility criteria when it came to case type, which will be expanded as CBO capacity increases. For example, using data, this site picked one case type that had around the same number of charges as the number of cases that could be referred (ie. they saw that there were around 25 burglary charges and they needed 15 referrals), filtered all the young people arrested for that crime type through their remaining eligibility criteria and if it was a match, all those cases were sent to the CBO.

This process works well if you find a case type that is RJD appropriate and statistically relevant. What we've learned through this process is that you still need to have a process in place to stagger the case referrals. On the off chance that 15 young people are all charged with burglaries in November and all turn out to be eligible for the program, you don't want your program receiving all 15 cases at once. Additionally, this option leaves

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room for the opposite to happen—maybe 25 youth were charged with burglaries last year, but then this year, there are only 10, and out of those 10 only 6 are eligible for RJD. You want to find a process that is dynamic and fluid enough to prevent overwhelming or underwhelming the RJD program.

Sign Legal Documents

Up until this point, your relationship with the DAO and other system partners has been ‘informal’ in the sense that nothing has been legally or contractually agreed upon in writing. Clearly this program is something you are all deeply invested in, but the actual process of referring cases cannot begin until:

1. A memorandum of understanding (MOU) has been signed by the CBO and all system referring agencies
2. A standing order has been signed by the presiding juvenile judge in your county
3. You (the CBO) have officially been trained in all the RJD processes

Those three final steps don’t necessarily have to happen in that order. Some DAs like to sign the MOU and then start referring cases immediately, while others like to sign the MOU and give it a few months before cases actually start being handed off. There is also a chance that the DAO may not feel ready to sign any legal contract or document until you and your staff have all completed the necessary trainings and are officially ready to start receiving cases. If this is the case, it’s still worth going through all the remaining attachments, editing them accordingly, and ensuring that all sides understand what is being asked and required of each other so that once you are trained, the legal documents can be signed, and nothing will come as a surprise to folks later on.

The two legal documents that need to be signed by the DAO before a program can begin are:



Download Generic RJD DA MOU

A memorandum of understanding (downloadable above) is a legal contract signed by the facilitating CBO, the DAO, and any other referring system agencies (i.e. if probation will be directly referring you cases, they must sign this document). Only once this document has been signed, the DAO and other referring agencies can begin referring cases.



Download Generic RJD Standing Order

The standing order (downloadable above) is signed by the presiding juvenile judge of your county. This document allows for unredacted police reports to be sent to the CBO as part of the case referral. It’s important for CBOs to have access to unredacted police reports for various reasons, but most impor-

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tantly it gives the contact information of all parties that were involved and impacted by the incident so that facilitators can reach out and begin the restorative process.

Both the MOU and the standing order are generic templates and are completely editable and customizable, so you'll want to go through each document and fill in the specifics of your county. The DAO and other system partners will most likely want to go through and negotiate/change pieces of these documents, especially the MOU, based on their comfort level, politics, etc. We strongly suggest you do not go into any negotiation or modification meetings until you have read through each of these documents extensively and, better yet, ***gone through them with a lawyer***. Using your Youth Justice Landscapes, identify allied youth justice lawyers who can sit down and explain these documents to you and potentially even join you in the negotiations. You want to come into negotiation meetings with a clear understanding of what the document is asking for, what the DA wants to change, and whether or not that interferes with the values and principles of the program.

As you're reviewing both documents, there are a couple things we'd like to emphasize, especially with regards to the MOU. First, we're intentional about keeping this document a bit broad and vague. We don't include the specific zip codes or specific types of cases or referral criteria in the document because we want the program to evolve and grow without having to re-open this contract every time a change is made. The hope is that this document will be signed in perpetuity so that as zip codes and case types expand (in severity and volume) you can do so more easily than reconvening all signatories on the document, making alterations and then resigning the document. The elected district attorney who originally signed the MOU will not be in office forever. You can never know who the future DA of your county will be and what their opinions on the program or certain clauses may be. We don't want to risk re-opening a document and having certain clauses be up for negotiation again based on the character of the current elected official. Instead, the idea is to have separate internal documents that outline the specifics of eligibility criteria, referral process, etc. so that the overall idea of the diversion program can live in the MOU and will hopefully, over time, become more integrated with the internal structures, procedures, and protocols of the DAO—making it harder for incoming DAs to get rid of it.

Second, other than allowing cases to start being legally diverted to the CBO, the main chunk of the MOU is to ensure and maintain confidentiality of every single participant in the process from the point of referral through the end of the process, regardless of outcome. Maintaining the confidentiality of all participants involved is the cornerstone of the RJD program. Without the protection of knowing that *whatever* is said throughout the *entire* process is held in complete confidence, the depth, authenticity, and genuine transformation that comes from this process just won't happen.

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TIP!

When signing either the MOU or the standing order, make sure all of the signatures are on the same page as at least one sentence of content. In the off chance the pages in the document get separated from one another, you want to ensure that the signatures are connected and can always be traced back to the agreements made. Also, number the pages at the bottom this way—“6 out of 7”—so the complete document stays together and in order.

Introducing, reviewing, and negotiating the MOU and Standing Order to your system partners can be a somewhat lengthy process. At the end of it all, there’s a possibility that they may not feel comfortable signing it right away and would instead prefer you be trained and ready to receive cases the second they sign it. Regardless of whether they formally commit to this program via signing the legal documents, or they maintain their informal commitment via not signing the legal documents just yet, head on over to **Step 2G: Receiving Cases**, to make sure you have everything else in order before you request an RCC training!

What If...?

WHAT IF OUR COUNTY ACTUALLY CANNOT SHARE THEIR DATA WITH US—WHETHER IT BE BECAUSE THEY HAVE NOT MAINTAINED CONSISTENT COUNTYWIDE DATA COLLECTION, OR MAYBE BECAUSE THEY HAVE POLICIES THAT DON’T ALLOW THEM TO?

First, you should identify why they will not (or maybe cannot) share their data and whether or not they are actually still interested in implementing RJD. If they are, hooray! While this is not ideal, it’s just a hiccup and really shouldn’t stop you from being able to get a sense of what zip codes and case types to target for eligibility. Definitely ask around your youth justice networks to see if anyone else has had the same or similar issues, and if they maybe have the data or any suggestions on where to find it. Additionally, you may want to check to see if there are any schools or universities in your area that focus on criminology that may be able to support you. If so, try reaching out to professors in that department to see if they or their students can support you in tracking down the data.

Another suggestion is to try building relationships with and talking to some police officers or police departments about which neighborhoods and crimes they see most youth of color being arrested for. This doesn’t have to be a set of statistics written anywhere, it can just be what they see and hear everyday on the job. (Please note, this may take time and may not give you much more than you already know.)

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Looking at school district data can also be helpful as a proxy for juvenile legal system data. Finding the school districts with the most suspensions and expulsions, the highest volume of youth receiving free or reduced lunches, etc. will most often lead you to the districts where youth of color live and where youth have the most contact with the criminal legal system.

Ultimately, as people interested in implementing an RJD program that ends RED in your community, you should have lived experience, wisdom, and insight into which areas of your community are being overpoliced and what young people of color are most often being picked up for.

WHAT IF OUR DAO IS SO EXCITED ABOUT RJD THEY WANT TO SEND WAY MORE THAN 15 CASES IN THE FIRST YEAR AND WANT TO SEND ONLY THE MOST SERIOUS CASES?

First, what an incredible position to find yourself in! To have someone like a DA want to send you *more* than what you asked for is really powerful. Be sure to acknowledge the blessing of having this kind of DA but stay grounded in the process. Of course we would all love to decriminalize serious cases and take as many young people as are arrested per year, but the process is scaffolded in this way for a reason. As you start rolling out this process there will undoubtedly be some attention around what the DA has agreed to do. Some people in the community may feel really excited about this program, while others may feel strongly against it. You want to make sure you are setting yourself and the future of the program up for success. If you take a really serious case right out the gate and something goes wrong, that could potentially put the future of your program at risk. Of course, this doesn't mean you should just play it safe and take cases that wouldn't necessarily be charged if RJD didn't exist. But starting off with nonviolent car thefts, for example, as you start to get a hang of the process, taking cases, running a program, etc., can make this transition easier than starting with robberies involving weapons or bodily harm. The same goes for taking more cases. We scale the cases per year based on capacity. If your organization has more than two facilitators in the first year and feel that taking more cases is reasonable and doable then by all means do! The first few years, but the first year especially, will be a period of learnings (as well as exciting firsts and celebrations!). Trust your gut on what feels good to start with, knowing that strong foundations lead to long lasting and successful programs.

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2F CHECKLIST (SEE FULL CHECKLIST ON PAGE 9)

RECEIVE and ANALYZE county data



DEVELOP ELIGIBILITY criteria with DAO using RJD Case Eligibility Setting worksheet



CREATE referral process with DAO



REVIEW the MOU and the standing order with a youth justice lawyer



INTRODUCE the MOU and the standing order to relevant system partners



SIGN the MOU and the standing order



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Tools & Resources in this Step

A full list of resources can be found on page 127. All resources can be found on rjdtoolkit.org

- [Worksheet: Local Youth Justice Landscape - Data](#)
- [Worksheet: Local Youth Justice Landscape - Programs, Policies, and Boards](#)
- [Template: Two-Way Expectations of CBO/SP](#)
- [Worksheet: Establishing RJD Case & Participant Eligibility](#)
- [Resource: RJD Case Referral Criteria Checklist](#)
- [Resource: 6-year RJD Program Growth](#)
- [Template: MOU Template](#)
- [Template: Standing Order Template](#)

Step 2G

STEP 2G: RECEIVING CASES

Are We Ready to Be Trained to Receive Cases?

Once the necessary folks in your local juvenile legal system have agreed informally or formally to refer cases to your organization's restorative justice diversion program, it's time to confirm your funding and staffing, and this step reminds you of what that can look like.



IN THIS STEP:

Getting Organized

Funding

Staff Up!

What If...?

Checklist

Tools & Resources

Congratulations! By this point, you should be coming off meetings with the DAO and other system partners where you have received informal or formal (in that legal documents have been signed) buy-in for RJD in your community. This is a huge milestone! This section will review steps from previous sections to make sure you have all the resources, materials, logistical information, and staff necessary to receive training and have restorative justice diversion become a reality.

Get Organized

Even if your system partners did not wish to sign the memorandum of understanding (MOU) or standing order that was talked about in [Step 2F: Referring Cases](#), you still want to make sure that everything else is in order so that once you receive training, the documents can get signed and the program can get up and running. That looks like:

- Make sure the MOU and standing order reflect the changes and modifications you and your system

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- partners needed so there is nothing left to do on them except sign
- Have identified or confirmed funding for the program
- Have positions and infrastructure in place to start the program so that once you are trained the program can begin
- Request RCC training from the Restorative Justice Project at Impact Justice!

Establish or Confirm Funding

As you learned in **Step 2D: Funding**, you must consider how you will fund your RJD program. Ensuring funding for your program will support its sustainability and overall success. Funding allows you to build the necessary infrastructure and systems, and fill all the necessary staff roles for your program. Make sure to create a fundraising plan that includes:

- Budget
- Fundraising goal
- Fundraising methods
- Fundraising pitch
- List of potential funding sources
 - Our Potential [RJD Funders resource](#) and the [Foundation Center](#) from **Step 2D: Funding** can help you start this part of the process
- Research from your community

Once you have a solid fundraising plan in place, you can track down funding for your RJD program. When you have funding in place, you will be able to hire program staff and obtain the resources to build out your program. Something worth noting is that having system partner buy-in (whether or not they have signed the MOU) makes your funding applications stronger!

Staff Up!

Before requesting training, make sure you've hired staff or established who will be holding what roles and positions in your RJD program. Again, every staff member plays an important role in the survival, maintenance, and success of your program. Feel free to revisit both the [RJD Org Chart](#) and the [RJD Staff Roles & Responsibilities](#) resources to make sure you have what you need to get the program off the ground.

As you can see, the organization chart and roles and responsibilities resources cover the necessary staff roles

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for a program during the first “pilot” year and for subsequent years as the program expands. To reiterate, in the first year “pilot” program, the minimum necessary positions for an RJD program to be successful are: two facilitators, one program manager, and one administrative assistant. During the first year, these positions will be tasked with all of the responsibilities detailed here as well as varying levels of the “Expanding Responsibilities.” However, as your program grows and expands in both responsibility and capacity, the “Expanding Responsibilities” listed will quickly become much more complicated. We encourage you to start thinking about how and by whom these responsibilities will get done without overburdening any one position. This may mean hiring new people tasked with the more specialized responsibilities.

Once you have everything sorted out, head over to [Step 3: Receive Training](#) to find out how to request an RCC training from us!

What If...?

WHAT IF WE’VE FOUND PEOPLE IN OUR COMMUNITY WHO ARE INTERESTED AND WOULD BE PERFECT FOR WORKING WITH OUR RJD PROGRAM BUT WE HAVEN’T FOUND FUNDING YET?

First, congratulations on establishing what you have! Building this program from the ground up requires a lot of juggling of what is currently happening and foresight about what needs to be happening down the line. It can feel frustrating when the timing of certain pieces don’t seem to line up the way we expected or planned for them to—our team can definitely attest to this! Continue to build and nurture relationships with folks in your community and be transparent around where you are in the process. We have found that all of the pieces do tend to come together at the right moment.

What if we’ve received funding for our program but can’t find the right people to hire to work with us? Very similar to the scenario above. Funding is never easy to receive so hats off to you! If you’re having trouble finding the right folks for your program, think about how you’re communicating these positions out into the community and try to diversify! Are your open positions only visible on your website? Think about promoting them via social media and your organization’s listserv; ask partner orgs in your community to post them; send them out to local coalitions you’re a part of; post fliers in local community centers or other frequented areas.

What if we realize that there are actually other organizations in the area that we could have partnered with earlier in the process but we just learned about them now?

It’s never too late to collaborate! In fact, we strongly encourage you to be looking for ways to build and

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expand your network of support before, during, and after your RJD program has launched. As you've learned in earlier sections, restorative justice asks us to embrace our interconnectedness with one another, so your RJD program should never operate in isolation or feel exclusionary. There are so many incredible people doing truly incredible work, and oftentimes, the best folks—the ones most steeped in community and most deeply connected to the work—don't have the best website or the flashiest brochures. Leaving room for potential allies or partners at every step of the way will allow your program to flourish as it continues to evolve.

2F CHECKLIST (SEE FULL CHECKLIST ON PAGE 9)

FINALIZE any edits to both MOU and standing order so they are both ready to be signed at any point



IDENTIFY OR CONFIRM funding streams for your RJD program



HIRE necessary personnel for your RJD program



Tools & Resources in this Step

A full list of resources can be found on page 127. All resources can be found on rjdtoolkit.org

- [Resource: Potential RJD Funders](#)
- [Resource: RJD Org Chart](#)
- [Resource: RJD Staff Roles & Responsibilities](#)

Step 3

3

STEP 3

Receive Training

Sign up for updates about trainings from Impact Justice's Restorative Justice Project.



Congratulations on finishing the toolkit! You have the power to create the justice you would like to see in your community. The final step is signing up for updates about attending a Restorative Community Conferencing (RCC) training from the Restorative Justice Project.

We'll start offering RCC trainings to the public in 2020.

We strongly encourage folks to complete all steps of the toolkit before signing up for a training from us. It is essential that everyone attending an RCC training has completed the trainings laid out in Step 1F: Interactive Learning (implicit bias, circle, etc.) and held or facilitated circles before.

Unsure if you're ready for a training? Contact us and ask! In the meantime, we encourage community-based organizations accessing this resource to complete as many of the steps of this toolkit as possible.

Please sign-up [online](#) to receive updates about future training opportunities and updates about this Toolkit generally.

Stories



These stories appear throughout the toolkit, and we offer them to bring life to the steps. These are based on real experiences in partnerships with community-based organizations and juvenile legal system partners. We've chosen not to name the people and locations in these stories for two reasons. In addition to preserving anonymity around some issues of political sensitivity, we also felt that hearing these stories in this form would allow readers to identify with them more, to imagine how scenarios like this can happen in any location, including your own.

NET-WIDENING FOR BUNNIES

A family in a major US city kept an assortment of bunnies, goats, and other pets in their backyard. A 9-year-old child who lived in the neighborhood was, naturally, drawn to them. One day, no longer able to resist the temptation, he went into their backyard, opened a bunny's cage, pet it, and set it free. Upon seeing this, the homeowners called the police on the child, who was then arrested for breaking into the backyard and damaging the bunny cage. This child's case eventually found its way to the desk of the local DA, who diverted it to RJD.

Were the facts of this case severe enough to warrant an accountability process with a four-part plan to repair the harm? Do you think that, had the DA gone forward with charging this case, a court would have

put the child on probation? Even if in some jurisdictions the child would have been placed on probation, is RJD the right approach for this case? This last question will be your most challenging to answer.

From **1D: Restorative Justice Diversion**

POST-CHARGE NET-WIDENING FOR POLICE INTERACTIONS

Some legal system agencies have opted to use restorative justice in a post-charge posture (something we think is unwise for reasons stated elsewhere in this toolkit). In one post-charge jurisdiction with whom Impact Justice is not currently partnering, a police officer interrogated a child without good reason and the child rightfully decided not to talk to the officer. When the child tried to leave, the officer grabbed her, and she responded instinctively by pushing the officer's hand away. The officer then charged the child with resisting arrest, and she was offered RJD to "repair the harm done" to the police officer.

Would the RJD process be helpful or harmful for a youth in this situation? What power dynamics are at play when law enforcement use an RJD process for this type of alleged harm? How are those dynamics exacerbated when having charges dropped requires apologizing to a police officer?

From **1D: Restorative Justice Diversion**

MATCHING YOUR VALUES, GOALS AND ASPIRATIONS

In one county, several system partners supported the need for a diversion program, and they approached a community-based organization (CBO) to be RJD facilitators. The CBO did a deep exploration of the proposed program and the necessary relationship with county agencies. They'd never partnered so closely with county agencies before, and needed to determine whether the program format would be in alignment with their organizational mission and values. In that assessment, they realized that to remain true to their values and mission, they needed complete autonomy in their diversion work; they were concerned with the implications of county agency oversight of the program. This was particularly important to the CBO because they needed to maintain the community's trust, and to know that the information gathered from RJD program participants would remain confidential. Negotiating the CBO's desired level of autonomy took quite some time, and many conversations between the CBO and system partners were required to build the level of trust needed to keep moving forward. But once it was decided by both the system partners and the CBO that the program would have no oversight from any referring agency, the CBO was on board.

As they began implementing the pilot program, the CBO kept a close eye on ensuring that their program participants were treated with care and cultural humility. Early on, the CBO realized that to best address the issues facing their community, they needed to expand their staff size and its diversity. By hiring more staff from the community they were serving, the organization was able to deepen their efforts and commitments to their own core values.

From **2A: Program Fit**

THE PROPER ROLE OF SYSTEM PARTNERS

A university once invited the renowned professor Howard Zehr to give a public talk on restorative justice. Many system partners attended, who became eager to implement a restorative justice program in their own county. Professor Zehr connected them to Impact Justice's sujatha baliga to provide thought partnership and guidance. sujatha advised them to identify community-based organizations to partner with and lead the development of the program. She also advised that the facilitating CBO must be deeply embedded in the community to be served, and for that CBO to have complete autonomy over the diverted cases.

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Many challenges arose, stemming from long-standing, complex relationships between local CBOs and system partners. Over time, Impact Justice’s team facilitated a series of dialogues between the county agencies and local CBOs. In these rich, and often challenging conversations, the system partners were strongly encouraged to partner with a CBO which met the criteria found in this Program Fit Questionnaire. Ultimately, these conversations led to building strong, healthy, and clear relationships between system partners and several CBOs. The system partners began to understand the power imbalance that arises when they lead the RJD implementation process and why it’s essential for communities to lead the process from the onset. In the end, the system partners worked to find a strong community-based organization to lead the program and the program became a successful, community-led endeavor.

From **2B: Community Held**

A CHALLENGING POLITICAL CLIMATE

In one county a community-trusted, youth-serving organization had long desired to start an RJD program. Their district attorney, however, was vocally resistant to diversion programs in general—let alone a pre-charge RJD program. During the CBO’s five years of advocacy, the DA eventually agreed to divert a single case to RJD. Despite the incredible success of that case (including positive local and national media attention on the story and its restorative justice resolution), the DA remained unwilling to partner with the CBO to divert more cases to RJD.

Knowing that this would be an uphill battle, the organization focused their energy on community coalition building. Coalition building led to the creation of a county-wide racial justice task force that was approved by the county board of supervisors, and support for ending racial and ethnic disparities through diversion prevailed. The conviction, resilience, and advocacy of the community ultimately contributed to the election of a new, progressive district attorney. The new district attorney was deeply committed to ending racial and ethnic disparities in their county’s juvenile legal system and looked to the community to support solutions that met the needs of their constituents. This DA was eager to support the implementation of a restorative justice diversion program, and partnered with the CBO to ensure the development of a strong program.

From **2B: Community Held**

FOSTERING A COMMUNITY PARADIGM SHIFT

In one county, the community came out in full support of alternatives to youth incarceration after experiencing decades of youth criminalization with no real solution. In order to respond to community concerns, a CBO held multiple community meetings focused on health and the impact of criminalization. From these gatherings, the CBO compiled the needs and concerns of survivors and of relatives of young people who had been criminalized for harms they'd caused. At first, the stories seemed at odds with one another, coming from two separate "sides." But as the impacts of failed approaches to addressing wrongdoing continued to be shared from survivors and people who had been criminalized or otherwise impacted by criminalization, everyone began to find common ground and a common voice. As the conversations deepened, the lines between who was a survivor and who had been criminalized blurred.

In the gatherings held by the CBO, stories of harm experienced by both survivors and the families of incarcerated youth caused a paradigm shift in the way the community collectively addressed youthful wrongdoing. This shift, from opposition to collaboration and support, fostered the conditions for the creation of a restorative justice diversion program and for a healthier community.

From **2C: Community Vision**

A LESSON IN CHOOSING FUNDERS WISELY

In one county, the CBO is funded by a governmental grant. The application, and the grant reporting requirements, focus primarily on numbers—how many youth are receiving the "treatment." There is no requirement in the grant that the cases be high level, that victims be present, or that youth of color are included in a way that reflects their system involvement. Each quarter, the CBO staff scramble to do "enough" cases. When the district attorney offers them cases that don't align with the core elements—cases they would generally say are inappropriate for their RJD program—the pressure to take those cases is real. This pressure is compounded by the fact that it's always unclear whether the DA in that jurisdiction will really charge the cases if they don't go to RJD.

Compare this with another county, where the majority of the funding for the RJD program comes from the county's budget for youth wellness programming. From the start, that funder and the district attorney in that county shared a goal of not net widening, and were in agreement that it was more important to get the right

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cases than to get a large number of cases, especially as the program was in its development stage. This protected the CBO from pressure to take low-level cases or otherwise inappropriate cases from the DA to impress a funder by proving they did “enough” cases.

From **2D: Funding**

THE SKEPTICAL D.A. CAME AROUND

After a DA received an email from the presiding judge of the juvenile division asking him to come learn about restorative justice, he thought to himself, “Here we go again, everyone thinks they know better than we do...” Out of respect for the judge and a sense of duty and protocol, he replied to the email saying that he would attend. During that first meeting, he was intrigued by the notion that youth would be encouraged to take responsibility for the harm they caused. In the weeks that followed, he was impressed that the restorative justice advocates reached out to meet with him individually and to ask him questions like: What about his current job was and wasn’t working for him? What he would need to be able to support the development of an RJD program? He admitted he was tired of speaking with “angry, dissatisfied crime victims,” and he was impressed with the idea that RJD involved youth being directly accountable to survivors’ self-identified needs.

In those initial conversations, the presiding judge of the juvenile division quickly handed over facilitation of the meeting to local CBO staff who were grounded in restorative justice practice and facilitation. These meetings gave people the opportunity to share their frustrations with the current system of justice, to find shared strengths and interests, and to stand on common ground. Often the DA and the public defender would joke that this was the only meeting in which they’d sit next to one another.

Because many attendees expressed appreciation for these meetings, the judge convened a county-wide restorative justice task force, which met monthly. The DA attended all of these meetings, eventually attended multiple restorative justice trainings, and read foundational texts about restorative justice. This DA began regularly saying that the juvenile legal system was out of date and generated poor outcomes, and that he preferred community members to take the lead on helping youth in conflict with the law. He cared deeply about people harmed and saw that the criminal legal system failed to attend to their needs the way restorative justice processes did. It took him a while, but when he truly understood the philosophy and practice of restorative justice, he became a champion for it.

From **2E: Common Ground**

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THE RESISTANT BUT NON-OPPOSITIONAL PROBATION OFFICER

In one jurisdiction, the creation of a pre-charge felony diversion program for youth required the approval of the chief of probation. He was initially opposed to the idea that any child in conflict with the law could resolve the harm without probation supervision. In the first meeting to discuss the possibility of a pre-charge RJD program, he made it very clear that he had had negative experiences with restorative justice trainings in the past (“I’ve been on the RJ merry-go-round before”). The RJD advocates didn’t take this as a closed door. Instead, they met with him several times, allowing him to vent about the failures of decades of “newfangled” approaches to addressing youth crime, before moving into helping him see why the proposed approach to RJD attended to many of the things he was legitimately angry about. While he never became a “true believer,” these conversations led to him getting out of the way of the program proceeding without probation supervision.

From **2E: Common Ground**

Tools & Resources

1E

Resource: Case & Program Eligibility Recommendations

Resource: RCC Infographic

Resource: RCC Stages

Resource: RJD Program Overview & Elements

1E

Restorative Community Conferencing: A study of Community Works West's restorative justice youth diversion program in Alameda County

2A

Questionnaire: Program Fit

Resource: RJD Program Organization Chart

Resource: RJD Program Staff Roles & Responsibilities

Resource: Big Picture Site Assessment

2B

Worksheet: Community Partner & Ally Landscape

Worksheet: System Partner & County Leadership Landscape

Template: Restorative Justice Diversion System Partner Profile

Resource: Guide to Power Mapping

2C

Resource: Restorative Justice Listening Sessions and House Meetings

Worksheet: Local Youth Justice Landscape - Data

Worksheet: Local Youth Justice Landscape - Programs, Policies, and Boards

2D

Resource: Restorative Justice Diversion Program Staff Roles & Responsibilities

Resource: RJD Program Overview & Elements

Resource: Stages of the Restorative Community Conferencing Process

Template: RJD 101 Powerpoint

Resource: Potential RJD Funders

Tools & Resources

2E

Resource: RJD Program Overview & Elements

Template: RJD 101 Powerpoint

Resource: Potential RJD Funders

Template: Talking Points for Meeting with System Partners

Resource: Guide to System Partner Meeting Agendas and Activities

Resource: RCC Infographic

Resource: RCC Stages

Resource: CWW report

Resource: Case & Program Eligibility Recommendations

Resource: 6-year RJD Program Growth

Template: Two-Way Expectations of CBO/SP

2F

Worksheet: Local Youth Justice Landscape - Data

Worksheet: Local Youth Justice Landscape - Programs, Policies, and Boards

Template: Two-Way Expectations of CBO/SP

Worksheet: Establishing RJD Case & Participant Eligibility

Resource: RJD Case Referral Criteria Checklist

Resource: 6-year RJD Program Growth

Template: MOU Template

Template: Standing Order Template

2G

Resource: Potential RJD Funders

Resource: RJD Org Chart

Resource: RJD Staff Roles & Responsibilities

Gratitude

This toolkit is the product of a deeply iterative labor of love and thought by the following writers and editors: Georgia Valentine, Rima Chaudry, Ashlee George, Jenny Poretz, Karen Schousboe, Miguel Garcia, Sandra Rodriguez, sujatha baliga, Dave Belden, Hanna Miller, Joseph Broadus, Kyung Jin Lee, nuri nusrat, and Alex Busansky. We're grateful to our restorative justice community and team at Impact Justice who supported this project in various ways throughout this journey.

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The approach to restorative justice diversion offered in this toolkit was initially developed through the generosity of time and spirit of countless practitioners, system partners, and teachers including Susan Marcus, Harmon Wray, Chief Justice Emeritus Robert Yazzie, Cheryl Graves, Ora Schub, Howard Zehr, Nadia Glavish, Kay Pranis, Kelly Branham, Renjitham Rita Alfred, Fania Davis, Jon Kidde, Denise Curtis, Millie Burns, Nancy Nadel, Lauren Abramson, Judge Gail Bereola, Matt Golde, David Anderson Hooker, Allan MacRae, Tenzin Geyche Tethong, Judge Andrew Becroft, Judge Heemi Maana Taumaunu, Mike Hinton, and Lorraine Stutzman Amstutz. Through Soros Justice Fellowship which began in 2008, sujatha baliga synthesized their wisdom and advice to launch the first iteration of our pre-charge RCC model; the continued advice over the years from our many thought partners has helped refine our team's approach to restorative justice diversion. We hope they will be pleased with how RJD has evolved into its present form.

It must also be named that we've drawn all the wisdom in this toolkit from innumerable sources, including but not limited to: Māori-inspired Family Group Conferencing, Navajo Peacemaking, Menno-

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nite framing of “covenant justice,” the Nguni Bantu meaning of Ubuntu, Tibetan Buddhist notions of interdependence, the fields of quantum mechanics and trauma healing, and from the wisdom of the criminal justice reform and abolitionist communities, anti-racism work, liberatory pedagogies, from community organizers, from freedom movements the world over, and most of all from the people who have shared their restorative justice journeys with us — kids who’ve caused harm, survivors, and their families, caregivers, loved ones, and communities.

Our work to gather, refine, and share the information in this toolkit required generous support from our philanthropic partners. Warm thanks to Open Philanthropy, Google.org, Mountain Philanthropies, Open Society Foundations, Heising-Simons Foundation, Porticus, The Zellerbach Family Foundation, Threshold Foundation, The California Endowment, Akonadi Foundation, and Ford Foundation, for believing in our restorative justice diversion work over the years.

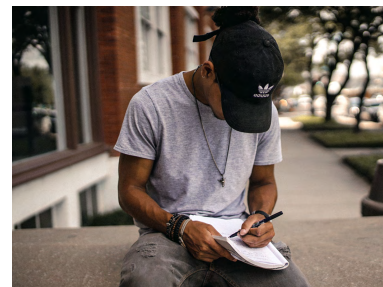
About page photo by Leo Rivas.

Source: Unsplash



Stories Photo by Brad Neathery.

Source: Unsplash



Other photos by JJ Harris of Tech Boogie Media.

Accountability

Merriam-Webster says “An obligation or willingness to accept responsibility or to account for one’s actions.” Restorative Justice teaches us that accounting for our actions can be a complex matter, including recognizing our conscious choices, trauma-induced triggers and unconscious actions, both from the traumas of our individual lives, and the collective traumas suffered from systemic oppressions. None of this is an excuse for our actions, but behavior we need to explore in order to take responsibility for the harm and take steps towards healing.

Source: [Merriam-Webster](#)

Charity or Savior model

A mentality or framework in which a person or organization tries to solve a problem without acknowledging the systemic and structural conditions underpinning that issue. For example, feeding the homeless while telling them to pull themselves up by their bootstraps; this does not consider the structural conditions that led to that person becoming homeless. Without acknowledging the structural conditions that lead to societal issues, these issues do not change or get solved.

Having a “charity or savior” mentality, consciously or subconsciously, means believing one is better than those one is attempting to help. This drives the motivation to “give back” rather than having genuine desire to change conditions, shift power, or confront one’s own privilege. A person or organization with a “charity or savior model” often has very little knowledge of a particular place or issue, yet tries to solve a local problem that they lack a genuine connection to.

Confidentiality

As a legal term, the duty to refrain from sharing information with others, except with the express consent of the person who provided said information. There are rules and regulations which place restrictions on the circumstances in which a professional, such as an attorney, may divulge information about a client, and other situations may be deemed confidential by the use of a contract.

In the restorative justice process, facilitators maintain strict confidentiality as it pertains to all participants. Throughout the process, all participants also commit to keeping everything confidential. Legal documents,

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such as the MOU described elsewhere in this toolkit, are necessary for confidentiality to be protected in legal proceedings.

Source: [Legal Dictionary](#)

Criminalization

“The culture of mass criminalization is one in which aggressive policing and incarceration are our default tools for dealing with a wide array of social problems that can and should be solved by other means. These punitive approaches far exceed what is necessary to maintain public safety and primarily target poor people and people of color.”

Source: drugpolicyalliance.org

Dependency-delinquency or Crossover youth

Youth who are at risk of, or are fluctuating between, the child welfare and juvenile justice systems.

Source: [Center For Juvenile Justice Reform at Georgetown University](#)

Equal partiality

Rather than trying to remain neutral (which is not possible) or partial (which can lead to bias), facilitators must care equally for all participants, regardless of their role. Everyone should leave an RCC with their dignity, humanity, and life force intact, and should feel that a facilitator is equally invested in this outcome for all participants.

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Evidence-based

In the mainstream research community, evidence-based practice refers to programs, curricula, or practices that have been proven with hard data to have tangible and replicable benefits using rigorous research. Accepted research methods are generally randomized-control trials, quasi-experimentation, or meta-analyses.

It is important to note that there are indigenous, cultural, and community-based practices that people know are effective, but are not considered “evidence-based” by the mainstream research community because of the lack of data and findings backing them.

Source: [Vera Institute of Justice](#)

Facilitator

The person who plans, guides, and manages the RJD process to ensure that the group’s objectives are met effectively, with active participation and collective buy-in from everyone involved. They help to set the tone and environment for circles and RCCs to take place such that everyone feels ready, safe, supported, and heard. They also guide the conference toward plan creation and in some instances will support the responsible youth during plan completion. Facilitators may also support participants to connect to wraparound services as needed.

Historical trauma

The aftermath and legacy of traumas inflicted on whole groups of people. “Aftermath describes political and economic structures, while legacy refers to cultural ideas, beliefs, and prejudices. Legacy and aftermath work together to help maintain detrimental cultural norms that result in, and sustain, violence.”

Source: [The Little Book of Racial Healing](#)

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In perpetuity

For all time; forever

Source: [Merriam-Webster](#)

Intersection/Intersectionality

Intersectionality is a term coined by the Black feminist scholar and critical race theorist, Kimberlé Crenshaw, who says, “intersectionality is a lens through which you can see where power comes and collides, where it interlocks and intersects.”

The various forms of social stratification, such as class, race, sexual orientation, age, religion, creed, disability, and gender do not exist separately from each other but are woven together. This woven experience can compound an individual’s experiences of marginalization, as well as privilege. So while people may have a shared identity, the way their identities intersect make that shared identity markedly different. For example, a white woman’s experience of sexism will be very different than a Black woman’s, given that her experience is compounded by racism.

Source: [Kimberlé Crenshaw](#)

Latinx

A non-gendered way of referring to people in place of the terms “Latina” or “Latino.” It moves beyond terms like “Latino/a” and “Latin@,” which still reinforce a gender binary. Folks who identify as Latinx may be doing so because they don’t identify within the binary of Latino/Latina or male/female. The description has also spread to other communities, with Chicano being recast as Chicanx and Filipina as Filipinx.

The “x” also can be read as a political statement, similar to Malcolm X and other members of the Nation of Islam, who use “X” as a way to reject the systems in which many Black Americans ended up with the last names of those who owned their ancestors through slavery.

Source: [Time](#)

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LGBQ/TGNC

An acronym used as an umbrella term for lesbian, gay, bisexual, queer, transgender, and gender non-conforming people. These are distinct and sometimes overlapping identities with which people might self-identify, not labels anyone should assume about someone.

Source: Merriam-Webster

Liberation framework

Rooting one's actions and intentions in the liberation of all oppressed people. Liberation is both the undoing of the effects and the elimination of the causes of social oppression, and the outcome after these have been accomplished.

Source: [Unlearning Racism](#)

Lived experience

The wisdom a person gains from having the first-hand experience of living as a member of an oppressed or marginalized group. For example, a formerly incarcerated person is someone with lived experience of the criminal legal system and its impacts.

Net-widening

Instead of reducing the number of youth formally processed through the juvenile justice system, “net-widening” policies actually subject more youths to formal justice system intervention... The implications of net-widening are serious because the process results in the diversion of resources from youth most in need of intervention to youths who may require no intervention.

This process depletes the system's resources and impairs its ability to properly intervene with appropriate

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youth. Instead of improving public safety, these early intervention and prevention strategies promote net-widening by shifting resources from youth most in need to youth least in need.”

Source: [Center on Juvenile and Criminal Justice](#)

Paradigm shift

“An important change that happens when the usual way of thinking about or doing something is replaced by a new and different way.” RJD is meant to create a paradigm shift away from punitive responses to harm to those that focus on healing harms and rebuilding relationships.

Source: [NPR](#)

Power & privilege

“Power is unequally distributed...in society; some individuals or groups wield greater power than others, thereby allowing them greater access and control over resources. Wealth, whiteness, citizenship, patriarchy, heterosexism, and education are a few key social mechanisms through which power operates.”

Privilege is “unearned social power accorded by the formal and informal institutions of society to ALL members of a dominant group (e.g. white privilege, male privilege, etc.). Privilege is usually invisible to those who have it because we’re taught not to see it, but nevertheless it puts them at an advantage over those who do not have it.”

These concepts have roots in WEB DuBois’ work on “psychological wage” and white people’s perception of superiority over Black people and people of color.

Source: [Beyond the Psychological Wage: Du Bois on White Dominion](#), [Intergroup Resources](#), [Colours of Resistance](#)

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Power with or Power over

Terms originally coined by Mary Parker Follett (1868-1933), “power over” and “power with” are two of four “expressions of power.” “Power with” is used in the context of building collective strength. In the “power over” expression, “power is seen as a win-lose kind of relationship. Having power involves taking it from someone else, and then, using it to dominate and prevent others from gaining it.”

“Power to” and “power within” are the other two expressions of power. Learning to see and understand relations of power is vital to organizing for progressive social change.

Source: [Powercube](#), [Wikipedia](#)

Pre-charge

Any point in the legal system process before appearing before a court and receiving a charge. Pre-charge diversion occurs prior to a young person going to court and being charged with an offense, in order to reduce legal system contact and improve outcomes for youth by holistically identifying and addressing youth needs and providing opportunities for non-punitive accountability.

Pre-charge diversion for youth may occur at (a) the point of arrest or citation by law enforcement— either before or after the arrest or citation is recorded; (b) after referral to probation (but before a probation officer is assigned); or (c) after referral to the district attorney.

In some jurisdictions, people refer to this as “pre-filing.” However, the term pre-filing may or may not include formal or informal probation. For purposes of this toolkit, we are discussing forms of diversion which do not involve the assignment of probation supervision, whether formally or informally.

Source: [Countywide Criminal Justice Coordination Committee Youth Diversion Subcommittee & the Los Angeles County Chief Executive Office](#)

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Racial justice

“The proactive reinforcement of policies, practices, attitudes and actions that produce equitable power, access, opportunities, treatment, impacts and outcomes for all... A key indicator of racial justice is equality in the impacts and outcome across race.”

Source: [Uprooting Racism](#)

Responsible youth

In the words of [Bryan Stevenson](#), “each of us is more than the worst thing we’ve ever done.” Using the terms “responsible youth” or “young person” instead of “perpetrator” or “offender,” acknowledges that we are all human. We all deserve for our humanity to be the first thing recognized about us. We shouldn’t be defined by our actions when we have all done or experienced harm. We want to allow for change and growth, not define someone by a static event that happened.

Responsible youth acknowledges the transformative impact of a restorative justice process can have. A young person enters the process as responsible for the harm and afterwards becomes responsible to themselves and their community. Also, see definition for “survivor or person harmed.”

Status offense

“A status offense is an action that is prohibited only to a certain class of people, and most often applied only to offenses committed by minors.” Crimes only youth can be charged with include truancy, curfew, running away, possession of alcohol. RJD is not suitable for typical status offenses because this contributes to net-widening. Also, see definition for net-widening.

Source: [Countywide Criminal Justice Coordination Committee Youth Diversion Subcommittee & the Los Angeles County Chief Executive Office](#)

Strengths-based

Strengths-based is the opposite of how the current criminal legal system and US society as a whole operates, treating people as bad if they've done something harmful.

Remember the words of [Bryan Stevenson](#), “each of us is more than the worst thing we’ve ever done.” The RJD process is intended to affirm people and focus on what is right with a person, instead of what is wrong with them or the harm they experienced. One should approach interactions with RJD participants (or any person, for that matter) from a perspective of getting to know them, their skills, or qualities they’re proud of - i.e. their strengths. The response to the harm should uplift those strengths.

Nobody is bad, nor can they become bad by any actions. It is possible and necessary to hold someone fully accountable without losing sight of their strengths, assets, and humanity.

Survivor or person harmed

In the words of [Bryan Stevenson](#), “each of us is more than the worst thing we’ve ever done.” We add that each of us is also more than the worst things that have ever happened to us. Using the terms “person harmed” or “survivor” instead of “victim” acknowledges that we are all human. We all deserve for our humanity to be the first thing recognized about us. We shouldn’t be defined by our actions when we have all done or experienced harm. We want to allow for change and growth, not define someone by a static event that happened.

The term “victim” can also be stigmatizing. One shouldn’t assume a person feels victimized by what happened to them. Instead, we use “survivor” or “person harmed” when referring to someone who has experienced harm to approach the experience of harm from a strengths-based perspective. That said, it is important to not make assumptions about a person’s experience and how they identify; some people identify as a victim, others identify as survivor or crime survivor, and others still may not identify as either. Note, also, that some people may feel like what they have suffered is being downplayed by the idea that they have been “harmed,” especially when the situation involved violence. The best way to be respectful is to ask for their preference, with care to not make them feel labeled or further stigmatized. Also see definition for “responsible youth.”

Source: ccjcc.lacounty.gov, wikipedia.org

Glossary

Systems partner(s)

In the words of Bryan Stevenson, “each of us is more than the worst thing we’ve ever done.” Using the terms “responsible youth” or “young person” instead of “perpetrator” or “offender,” acknowledges that we are all human. We all deserve for our humanity to be the first thing recognized about us. We shouldn’t be defined by our actions when we have all done or experienced harm. We want to allow for change and growth, not define someone by a static event that happened.

Responsible youth acknowledges the transformative impact of a restorative justice process can have. A young person enters the process as responsible for the harm and afterwards becomes responsible to themselves and their community. Also, see definition for “survivor or person harmed.”

Trauma-informed

“Trauma-informed care means [engaging with] a whole person, taking into account past trauma, and the resulting coping mechanisms, when attempting to understand behaviors and [support] the person. It involves four key elements: (1) realizing the prevalence of trauma; (2) recognizing how trauma affects all individuals involved with the program, organization, or system, including its own workforce; (3) responding by putting this knowledge into practice; and (4) resisting retraumatization.”

Source: [Psychology Today](#) [Substance Abuse and Mental Health Services Administration](#)

A Note from the Authors

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Additional Attachments
to Submission of Chief Probation Officers of California



An Updated CPOC Adult Probation Business Model to Improve Criminal Justice Outcomes in California (May 2014)

Introduction

Welcome to the second addition of the adult services business plan presented by the Chief Probation Officers of California (CPOC). The role of probation in California has changed drastically in recent years. The passage of the Community Corrections Performance Incentives Act, and subsequently Criminal Justice Realignment, has expanded the public safety mandate of probation agencies, and required more effective and efficient supervision practices. This document outlines CPOC's strategy for success in this new environment, as well as highlighting probation's successes to date.

The probation system in California in all but one county is overseen by a chief probation officer whose responsibility is the oversight of both adult and juvenile offenders who are involved in the criminal justice process at the local county level. This document represents only the adult component of the probation system.

Central to CPOC's business model is a collaborative, data-driven approach to offender supervision. As the statutory chairs of county Community Corrections Partnerships, Probation Chiefs are leading local efforts to respond to the increased volume of locally sentenced and supervised offenders. Across the state, Probation Departments are working together and leveraging resources to improve service provision, data collection, and training. Underscoring all of this work is a commitment to research-based policies and practices that are proven to reduce re-offending.

About CPOC

CPOC was established in 1960 as an association of county Chief Probation Officers, meeting annually upon the call of the Director of the California Youth Authority. Orange County Probation Chief David R. McMillan served as the first President of CPOC. Sixteen years later, in 1976, incorporation of the association was accomplished under the guidance of Chief Margaret Grier, also from Orange County. The new by-laws were signed by all the Chiefs. Over the past 54 years the association has evolved from a loose-knit forum discussing mutual issues to a highly active, focused organization with full time executive staff and offices located across from the Capitol in Sacramento. Over the past decade CPOC has taken measured steps towards increased visibility and active involvement in legislative matters affecting fiscal, policy, resources and standards for the effective delivery of probation programs. Recognizing the importance of measuring offender outcomes, CPOC has established a policy in support of

research-based supervision strategies that reduce the drivers of criminal behavior for juvenile and adult offenders.

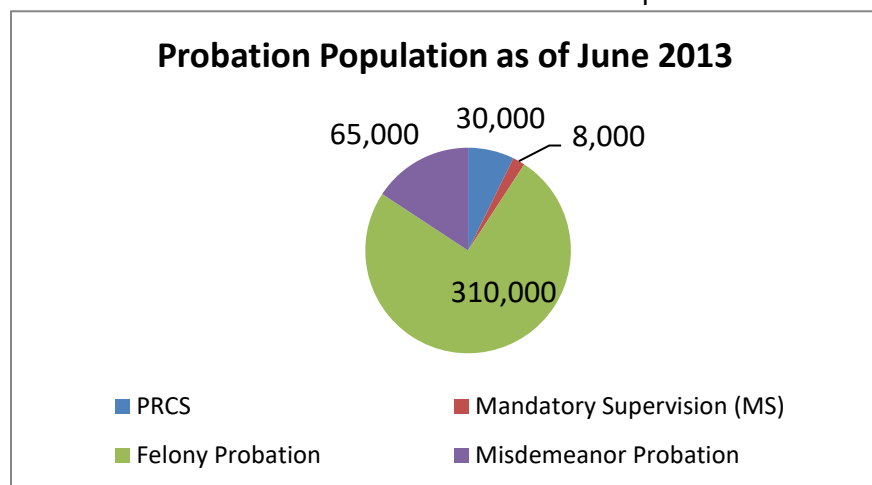
What is Adult Probation?

“Probation is a judicially imposed suspension of sentence that attempts to monitor and rehabilitate offenders while they remain in the community under the supervision of the probation department.”ⁱ

Probation occupies a unique and central position in the justice system. It links many diverse stakeholders, including: law enforcement; the courts; prosecutors; defense attorneys; community-based organizations; mental health, drug & alcohol and other service providers; the community; the victim; and the probationer. Probation’s leadership is now formalized through the Community Corrections Partnership.

Probation began in Massachusetts in 1841 as a means to provide a spectrum of punishment and rehabilitation services for offenders. Over time, the role of probation and the clients served by the system have evolved. By maximizing limited resources, probation provides numerous exemplary programs, many in partnerships with other county agencies, which set the stage for enhancing collaborations and maximizing resources.

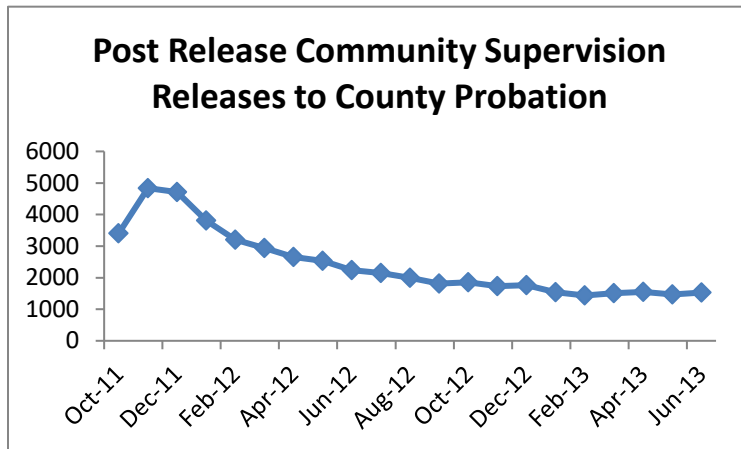
Probation supervises criminal offenders within local communities using a balance of supervision techniques involving offender accountability, enforcement and rehabilitation to reduce re-offending. By using these techniques, probation officers intervene and reduce the need to utilize prison and parole resources managed by the California Department of Corrections and Rehabilitation (CDCR), and are providing an effective local alternative under Criminal Justice Realignment. Probation is the most commonly used sanction within the criminal justice process. As cited in the 2009 report published by the Legislative Analyst’s Office, *Achieving Better Outcomes for Adult Probation*ⁱⁱ: “...almost three-quarters of adult felon offenders convicted in



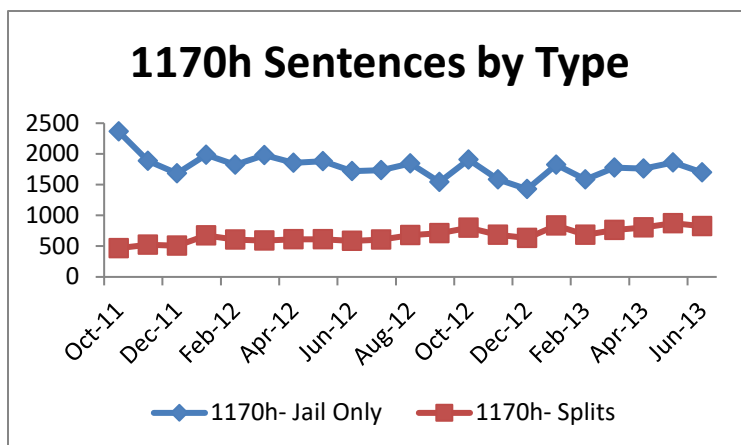
California in 2010—those eligible for a sentence to state prison—were actually sentenced to probation or a combination of probation and jail.”ⁱⁱⁱ Probation officers are supervising over 300,000 felony offenders, and 65,000 misdemeanor offenders as of June 2013. Resources to supervise these convicted criminal offenders have historically been woefully inadequate.

The statutory role of probation has changed significantly as a result of Criminal Justice Realignment. In addition to supervising offenders sentenced to local probation, probation departments are now responsible for Post-Release Community Supervision (PRCS) offenders returning from the custody of CDCR. These offenders, previously supervised by CDCR Parole, are now supervised by county probation for up to three years. By June 2013, there had been more than 50,000 PRCS releases across the state.^{iv} Probation’s role remains distinct from that

of state Parole; offenders with certain serious offenses or who are otherwise excluded by statute from PRCS continue to be supervised by Parole officers.



Local probation departments are also responsible for community supervision of local prison offenders sentenced under section 1170(h). These non-serious, non-violent, non-sex offenders are no longer eligible for state prison, and can be sentenced to local jail, felony probation, or a “split sentence” of jail time followed by probation supervision. By June 2013, more than 51,000 offenders were sentenced under 1170(h), and over 14,000 of those were split sentences.



Probation is rising to the challenge of its increased responsibilities, despite chronically insufficient resources. Using data driven methods, probation is achieving high quality results in the execution of its statutory mandates, and helping ensure protection of the public through the reduction of recidivism among the offenders under its care.

Mission Critical Services in Adult Probation

CPOC is committed to three mission critical services that serve as guiding core principals in shaping policy and legislative agendas. Through concerted strategic planning, CPOC has established action steps for implementing national standards of research-based practices. This updated version of the Adult Probation Business Plan provides our many readers and stakeholders with a clear view into the value of local probation services.

Critical Service #1: Services to the Courts

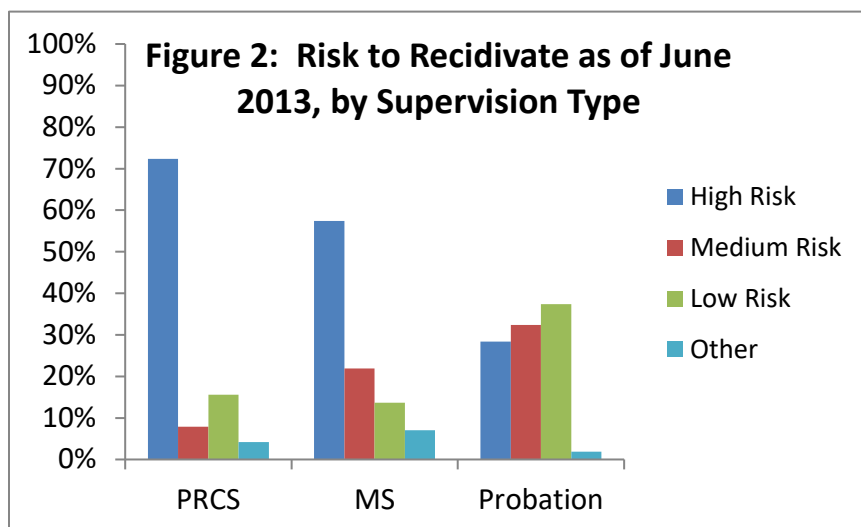
When adult defendants are convicted of law violations, probation conducts criminal investigations and provides information to the courts to assist in making sentencing decisions. Last year, probation officers completed over 240,000 reports for the court, including pre-sentence, post-sentence, and other supplemental reports which vary by the practices of each court.^v Included in this number were more than 100,000 pre-sentence investigation reports mandated by Section 1203 of the California Penal Code, and over 20,000 post-sentence reports. Thousands of other reports prepared by probation officers for the courts include pre-

plea reports, restitution reports and probation violation reports.

Probation officers are often assigned to the courts to provide timely on-site assistance, facilitate the transmission of the reports and provide other information requested by the bench. Probation officers provide this critical service to the courts statewide. In addition, several probation departments administer pretrial services, which includes conducting pretrial assessments to inform court decisions to release or detain, as well as supervising defendants who are released with conditions.

Critical Service #2: Supervision of Adult Offenders

A fundamental principle of supervision supported by research is assessing an offender's level of risk for re-offense. This information is a significant tool for probation officers to determine the type and level of supervision for the offender in the community. California probation departments use a formal risk assessment tool specifically designed to accomplish this and assign supervision based on the offender's risk level.



Supervision by risk level typically falls on a continuum from minimal contact for the lowest-risk offenders and increases in intensity as the offender's risk level increases, up to intensive supervision and surveillance for the highest-risk offenders. The lower-risk probationers are supervised via administrative or banked caseloads, which primarily involve monitoring the probationer's progress through written or verbal

self-report, periodic face-to-face contact and formal criminal record checks. Probationers posing a higher risk to the community are assigned to regular supervision, where there is routine in-person contact between the officer and probationer, as well as referrals to services and frequent follow-up to monitor progress. Supervision of probationers presenting the greatest risk to the community or those convicted of specific types of crimes is referred to as specialized supervision. These probationers receive more of the supervision activities provided for regular caseloads, with additional conditions associated with the probationer's crime and higher risk profile.

Due to limited resources and a growing population under supervision, probation departments have been forced to prioritize the allocation of supervision services. As stated above, most counties have implemented risk and needs assessments to assist in determining the level of supervision. However, since limited financial resources are an additional factor that influences the level of supervision counties are able to provide, probation chiefs must establish criteria to ensure that the most serious offenders are supervised. As of June 2013, nearly 50 percent of all offenders are high or medium risk, implying a need for higher level of supervision. However, the ratio of officers varies substantially between counties such that offenders who have been

“realigned”, such as mandatory supervision and PRCS, are often on lower caseload sizes. Over their probation supervision period, an offender can move either direction on the supervision and risk level continuum, though the goal of probation interventions are to reduce risk.

An investment in probation services that enables a department to deliver proven researched-based approaches is one of the best investments to combat recidivism. Probation has arguably the most potential to impact recidivism, given the fact that most felons are placed on probation, and probation provides an opportunity for longer-term intervention. While a law enforcement officer's role is typically at the point of arrest, and a prosecutor's role is typically swift, the probation officer is charged with the task to monitor behavior and develop a plan that reduces recidivism for three to five years for each offender.

While community supervision of adult offenders is essential to maintaining public safety, supervision, alone, does not prevent re-offense. The most effective way to reduce recidivism is to address criminogenic needs in higher risk offenders with treatment programs that have demonstrated effectiveness, such as cognitive behavioral therapies to change criminal thinking or drug and alcohol treatment programs. After administering a risk and needs assessment instrument, the probation officer then functions as case manager to support the offender through treatment by monitoring engagement, continually enhancing motivation, preventing drop-out, and sanctioning when appropriate for failure to comply with treatment requirements.

Despite the necessity for treatment, funding restrictions limit appropriate needs assessment, case planning, and treatment in many jurisdictions and for a large majority of the population for which it could be effective. Further limitations are evident throughout the state due to a lack of effective community resources and treatment programs available to meet the critical needs which are identified. Required programs are not only unavailable in many counties, but probation departments statewide lack the resources to effectively monitor and evaluate the effectiveness of those programs which do provide services to offenders.^{vi}

Critical Service #3: Services to Victims

Probation provides services to victims in several different ways. When there are victims involved in a crime, probation seeks their statements and presents their needs and interests to the court as part of the investigation reports. If the offender is placed on formal probation, probation officers provide information to the victims, offer support services, collect restitution and make referrals to resources. Under realignment, probation departments now notify victims of offenders' release from custody and offer support services. Additionally, probation officers provide an increased level of safety to victims by monitoring the probationers' activities.

The most documented service to victims is the collection of restitution owed to victims. Probation officers assist in collecting restitution from both adult and juvenile offenders on behalf of victims.

CPOC Strategic Planning History

In early 2000, the Judicial Council and the California State Association of Counties mutually concluded that a multidisciplinary task force was needed to examine probation services. Chief Justice Ronald George appointed an 18-member body composed of court, county and probation representatives in August. In 2003, the Probation Services Task Force report was issued and contained 18 recommendations. The principal findings cited probation as the linchpin of the

criminal justice system and reported probation was sorely under funded with a patchwork funding model comprised of unstable, short-lived grants. Despite the fiscal disadvantage, probation had demonstrated the ability to provide exemplary programs. The task force recommendations in the forefront then, which remain valid today, were critical in shaping the direction for CPOC's strategic planning efforts that began shortly after the task force report was released. The key recommendations are:

- Probation must have stable and adequate funding to protect the public, hold offenders accountable, and deliver rehabilitation.
- Probation should incorporate measurable outcomes in developing goals and objectives.
- Probation departments should develop a common statewide language, delivery of services and comparisons across jurisdictions.
- Probation should develop assessment and classification systems and tools.
- Probation should establish a graduated continuum of services and sanctions.

CPOC embarked on a strategic planning process in 2004 with technical assistance from the National Institute of Corrections. The first priority was to examine the growing body of research pertaining to proven practices in probation services. CPOC's vision emerged with crime reduction and prevention as core to its value and mission in public safety and the criminal justice system. Through the use of research-based approaches, probation outcomes are established and measured. Probation officer interventions and program resources are focused on the cases with the highest risk for recidivism based on high criminogenic needs. Reducing criminogenic needs is quickly becoming the strategy to reduce risk of recidivism. This approach has gained national recognition as "what works" in probation. It is a simple equation. Reducing recidivism enhances public safety. "What works" boils down to eight principals for the effective management of offenders.^{vii}

This business plan reflects a clear vision, set of values, and commitment to implementing effective probation practices. As a result, communities will be safer, offenders will be held accountable, programs will be tailored to address criminal thinking and behavior, and crime reduction will be at the core of every effort undertaken. The business plan for California probation is ambitious. However, as resources are invested in probation as the "linchpin" in a successful criminal justice system, outcomes will improve. Affirming the value of investing in probation was included in the 2009 Legislative Analyst's Office (LAO) report on *Achieving Better Outcomes for Adult Probation*. It contained two recommendations that are consistent with CPOC's strategic planning and vision for the future. The LAO stressed the need to implement the best practices identified by experts as critical for reducing recidivism rates and the need to reduce revocations to state prison.^{viii}

Through the strategic planning process, CPOC adopted the following initiatives aimed at achieving better outcomes in adult probation. The initiatives serve as a guide in developing statewide consistency and application of probation programs based upon the unique and diverse communities served by the 58 county probation departments.

- In 2009, CPOC sponsored SB 678, which was enacted to infuse probation with a state funding source to address adult caseloads with evidence-based practices. The ongoing stream of funding is intended to be from the savings to the state from reduced probation failures going to state prison.
- CPOC has chartered a standing research committee, which has successfully developed baseline measures for probation that are gathered and published as data dashboards on

realignment and split sentencing.^{ix}

A Commitment to Research-Based Supervision

In 2008, the concept of using research based proven practices in probation was gaining interest in California. That year an article titled, "Evidenced-Based Practice to Reduce Recidivism: Implications for State Judiciaries," authored by Roger Warren^x in cooperation with The Crime and Justice Institute at CRJ, National Institute of Corrections, and National Center for State Courts, was published. The article became the focus for the 2008 Summit for Judicial Leaders sponsored by the Administrative Office of the Courts and the Judicial Council held in Monterey, California. Over 200 participants attended the Summit including judges, court administrators, district attorneys, public defenders, probation chiefs and victim advocacy groups. These California justice system leaders were challenged by the two decades worth of data that has proven punishment, incarceration, and other sanctions alone do not reduce recidivism and, in fact can increase recidivism. The research data clearly revealed crime reduction and prevention was linked to offender recidivism. The skyrocketing cost of imprisonment has forced policy makers to find improved methods for achieving public safety goals through accountable and cost effective practices.

Recent legislative reforms have increased the need for research based approaches. Senator Mark Leno, sponsor of SB 678, was quoted in the Los Angeles Times on August 13, 2009 on the subject of prison crowding. "If we can keep offenders successful in their probation, we...keep them from coming back to state prison, thereby lowering the inmate population and saving the state money." Unchecked growth in incarceration is no longer an option, and communities demand that supervision agencies are smarter on crime. CPOC is prepared to lead county efforts toward a continuum of interventions that incorporate evidence-based practices, including probation officers assessing probationer risk and needs, and retooling incentives to promote positive offender change. The target outcome will be based on reducing recidivism.

These evidence-based practices are well documented and currently are the basis for much discussion as counties, states, and the federal system seek to find solutions to the out of control cost of prisons and the failed efforts of many corrections systems. Enforcement of probation conditions without addressing the criminogenic reasons criminals commit crime results creates a revolving door of new and returning prisoners. CPOC is committed to seeking and implementing programs that will impact the revolving door through the use of these proven methods.

To underscore its commitment, the CPOC membership adopted the following policy in support of research-based supervision strategies that reduce the drivers of criminal behavior for juvenile and adult offenders.

Specifically, that Probation Departments will:

- Utilize validated risk and needs assessment instruments to identify the drivers of individual criminal behavior, and assign appropriate levels of supervision and targeted treatment;
- Prioritize resources for interventions that have been proven through research to reduce recidivism;
- Use available data to monitor offender outcomes and guide business practices;

- Evaluate practices developed in the field of community corrections for effectiveness, and disseminate throughout the field;
- Build best practices in supervision into ongoing staff training.

Targeting efforts to achieve the greatest potential for recidivism reduction is the future of probation. The CPOC business plan provides a menu of evidence-based practices in adult probation that counties can use as a framework for strategic planning in their respective communities. The plan is flexible for phased implementation based upon budget and workforce resources and unique community needs.

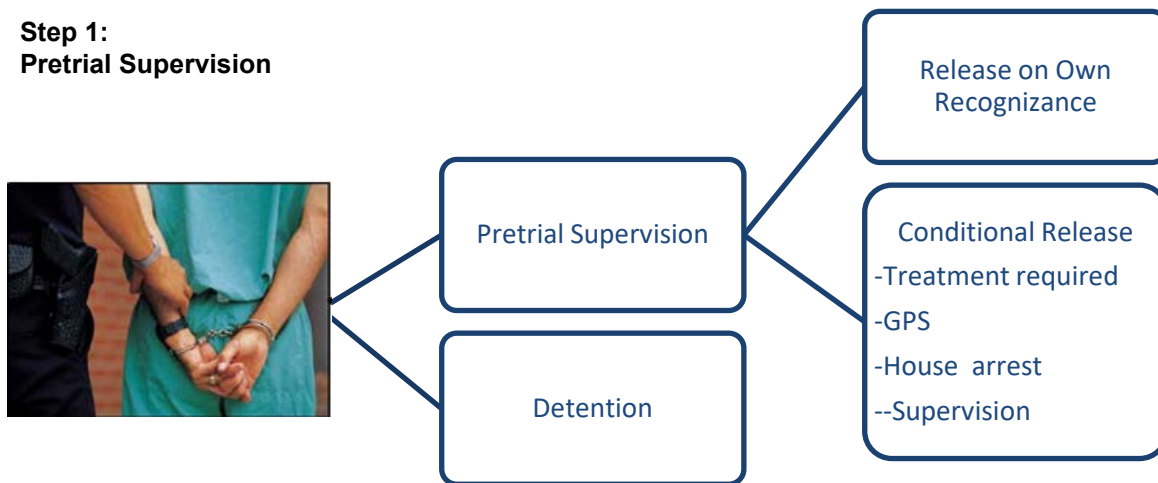
Using research-based approaches in probation is not a “soft on crime” approach. Rather, it serves to identify the risk of re-offending, provide supervision intensity and interventions that effectively reduce recidivism, hold offenders accountable, and reduce the churning of offenders in and out of very costly prison and jail systems.

Description of Probation Process and Interventions

Throughout the state, counties are unique and different in their use of and ability to implement evidence-based practices and components of a continuum of interventions. Based on differing needs and available resources, and by utilizing the evidence-based model approach as contained in this business plan, counties can identify and integrate pertinent elements from an array of nationally recognized evidence-based practices, allowing each county to best impact and reduce recidivism within their county.

The adult probation system offers an array of alternatives, services and modern risk assessments to determine the level and type of supervision, and intervention needed for individual offenders.

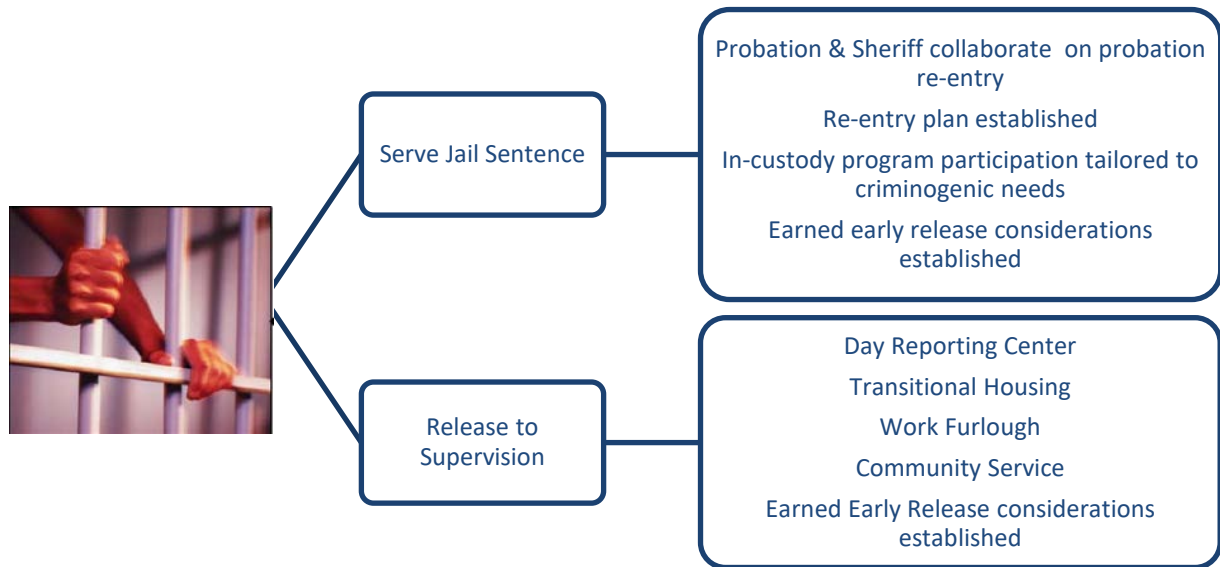
Step 1: Pretrial Supervision



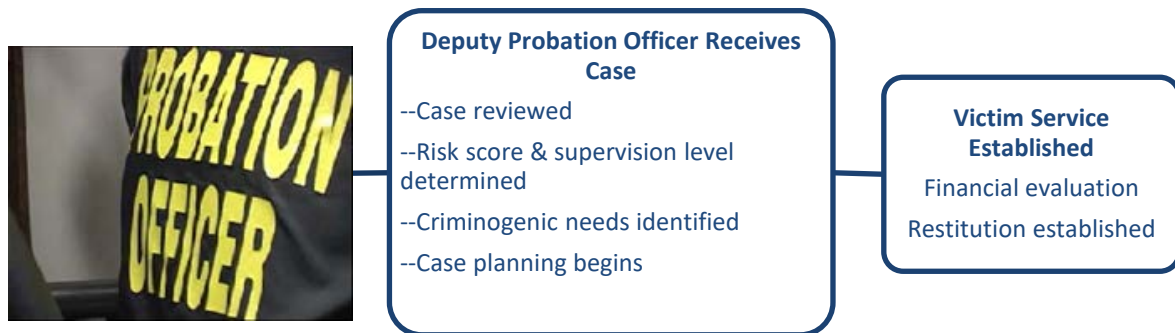
Step 2: Court Sentencing



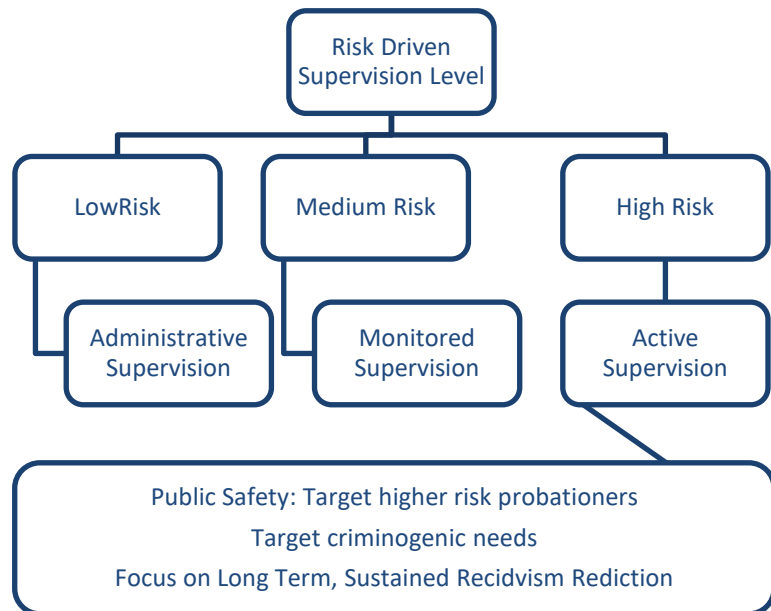
Step 3:
Jail as Conditions of Probation or 1170(h) Split Sentences



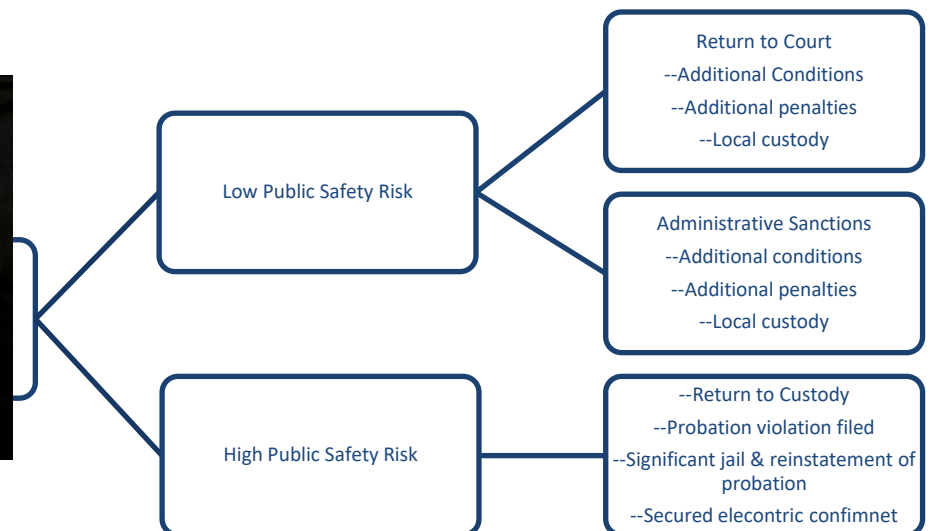
Step 4:
Formal Probation Supervision



Step 5:
Probation Community Supervision & Post Release Community Supervision



Step 6:
Probation and PRCS Violations



**Step 7:
Risk & Needs Reassessment**



Measurement allows
consistent feedback on
outcomes

Continued High Risk Public Safety Concerns

Supervision level high
Engaging probationer
Structured time and activities
Accountable to progress
Intensive interventions
Monitor substance abuse

Reduced Risk to Public Safety

Positive recidivism reduction indicators
Improved family relations
Reduced criminal thinking & criminal peers
Increased law abiding, healthy activities and lifestyle Stable employment
Completion of community service
Positive outlook

**Step 8:
Outcomes of Probation Supervision & PRCS**



Continued High Risk Public Safety Concerns

- Reduced risk or recidivism
- Behavior & lifestyle changes
- Impact to victim reviewed & restitution paid
- Social support intact
- Extended tracking of probationer recidivism

Probation Outcomes

Central to evidence-based corrections is the use of data to guide practices toward the most effective and efficient use of resources resulting in the best outcomes. When CPOC initiated strategic planning in 2005, one of its first priorities was to develop uniform data reporting guidelines about probation activities and more importantly probation outcomes. Since 2006, two CPOC-sponsored groups, the Probation Business Managers Association (PBMA) and the Probation Performance Measure Committee (PPMC) have worked to establish a statewide probation reporting structure in which there is consistency across all agencies in how probation fiscal and program information is reported.

Now chartered at the research committee, CPOC has taken on a leadership role in the collection and reporting of public safety information related to realignment, as well as administering an annual survey of probation departments. A key outcome of interest is answering the question, "How many probationers terminate without committing a new crime while under supervision?" While this effort is still in the early stages, largely because departments vary widely in their capacity to gather and report common information on outcomes, CPOC is committed to looking into various ways to measure outcomes.

Next Steps for California's Community Corrections System

Building on the Chief Probation Officers of California's strategic initiative to advance evidence based practices and outcomes in California Probation Departments, the CPOC Adult Probation Business Model seeks to achieve four primary goals through the implementation of a more effective correctional management system of offenders in the community. Despite the new challenges and responsibilities facing probation, these goals remain the same, and are, specifically:

- To improve corrections outcomes, especially re-offending, with best practices informed by research
- To reduce victimization
- To prevent harm
- To target funding toward interventions that bring the greatest returns

Given an environment involving highly competitive and limited resources, it is increasingly difficult to justify the expenditure and utilization of resources and strategies that are ambiguous or unknown in their ability to produce positive outcomes, or worse yet, proven to be counterproductive. One-size does not fit all in the area of corrections; incarceration cannot be the corrections system's only recourse. By integrating evidence-based principles, the community corrections system can begin to set a baseline and ongoing statistical outcome measurements, which in turn can be used to create expectations involving deliverables and better accountability for improved recidivism reduction and public safety outcomes.

As a public safety system, community corrections is in a unique and effective position to assist in the reduction and prevention of victimization and/or harm to individuals and society by offenders within the system. Similar to the medical community's fundamental principle for emergency medical services of "first do no harm," community corrections must be equally vigilant of the totality of its impact on the whole of society, victims and offenders alike. Focusing on the system's ethical commitment and responsibility to do good for the public, the Adult Probation Business Model creates an opportunity for enhanced checks and balances aimed at community protection, recidivism reduction, and victims' assistance.

The final goal of creating a system that targets and directs funding toward statistically proven

interventions and effective corrections strategies is a critical step. An effective corrections system is one that creates positive returns on taxpayers' investments while simultaneously increasing the level of confidence in the system to appropriately meet the diverse needs of the population it services.

Conclusion

The Chief Probation Officers of California have engaged in an unprecedented effort to coalesce around a common vision to advance our profession. Advances in research-based interventions, and data on the unique needs of individual counties, have helped Probation Chiefs across the state develop a common script to lead probation for the future. These advances, combined with the strong and cohesive leadership among California Chiefs across the 58 California counties, has resulted in the business model summarized in this document.

Adult Probation has a growing responsibility for handling sentenced felons and many misdemeanants residing in California's counties, especially under Criminal Justice Realignment. Probation Officers make sentencing recommendations to judges. Probation officers also provide services aimed to repair the harm caused by crime to victims and the community by holding offenders accountable. Probation officers work with treatment professionals to deliver individualized interventions that rehabilitate offenders and build skills and competencies that make offenders less likely to repeat crime and more likely to become productive citizens.

Probation is the most commonly used sanction in the justice system with three quarters of all felons under the community supervision of a probation officer, in lieu of a prison sentence. Probation is not only a cost effective alternative to prison, at a fraction of the \$49,000 annual price of incarcerating one individual; it has greater potential to reduce recidivism by addressing the criminogenic risk factors associated with repeat offending. In recent years a growing body of research has informed probation practice on the best methods to reduce crime.

Unfortunately, in California, county probation departments remain underfunded, and while county probation delivers the best services possible under these conditions, we are currently unable to fulfill the promise of maximum crime reduction for those individuals most at risk of committing subsequent crime in the community. Currently, an average of 19,000 probation violators are sent to prison each year, comprising 40 percent of the annual admissions to prison from the courts. While probation chiefs are optimistic about the future of probation, a cooperative and continuing effort between state and local government, along with a dedicated funding stream is required in order to fully implement effective probation practices across California county probation departments. Increased community supervision has the potential to significantly improve public safety, but only if resources are available to successfully reduce offender risk.

Through the passage of SB678 and Realignment, the legislature has acknowledged that the prison and parole system was costly, overloaded, and broken, and that community supervision is a key solution to the problem. An investment in probation can lead to enhanced public safety, and a greater number of adult offenders redirected to productive futures free of crime.

ⁱ Administrative Office of the Courts and CA State Assoc. of Counties, *Probation Services Task for Force*, 2003

ⁱⁱ Taylor, M. (2009). *Achieving Better Outcomes For Adult Probation*, California Legislative Analyst's Office.

ⁱⁱⁱ Judicial Council of California, *Disposition of Criminal Cases According to the Race and Ethnicity of the Defendant*, 2012

^{iv} CPOC California Realignment Dashboard. Available at <http://www.cpoc.org/assets/Realignment/dashboard.swf>.

^v Judicial Council of California, Report on Year 2 of SB678, 2013

^{vi} Taylor, M. (2009). *Achieving Better Outcomes For Adult Probation*, California Legislative Analyst's Office.

^{vii} Crime and Justice Institute at Community Resources for Justice (2009). *Implementing Evidence-Based Policy and Practice in Community Corrections*, 2nd ed. Washington, DC: National Institute of Corrections.

^{viii} Taylor, M. (2009). *Achieving Better Outcomes For Adult Probation*, California Legislative Analyst's Office.

^{ix} CPOC Research and Data webpage: <http://www.cpoc.org/research-data>

^x Warren, R., and Crime and Justice Institute. 2007. *Evidence-Based Practice to Reduce Recidivism: Implications for State Judiciaries*. Washington, DC: U.S. Department of Justice, National Institute of Corrections.



cpoc@cpoc.org